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# LANDSCAPES OF VIOLENCE: WOMEN SURVIVING FAMILY VIOLENCE IN REGIONAL AND RURAL VICTORIA.

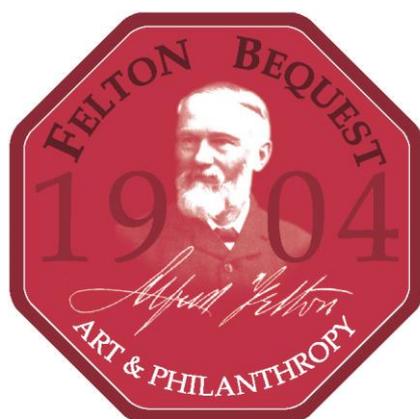


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## Abbreviations

ACLO	Aboriginal Community Liaison Officer (Victoria Police)
AGLO	Agricultural Liaison Officer (Victoria Police)
CALD	Culturally and linguistically diverse
CASA	Centre Against Sexual Assault
CLC	Community legal centre
CRAF	Common Risk Assessment Framework
CRRLJ	Centre for Rural Regional Law and Justice (Deakin University)
DHS	Department of Human Services
DOJ	Department of Justice
DVRCV	Domestic Violence Resource Centre Victoria
EHDVS	Emma House Domestic Violence Services
FVIO	Family Violence Intervention Order
FVLO	Family Violence Liaison Officer (Victoria Police)
FVPLS	Aboriginal Family Violence Prevention and Legal Service (Victoria unless specified as national)
GAE	General Australian English
GP	General practitioner
IBAC	Independent Broad-based Anti-corruption Commission
ICT	Information and communication technologies

LEAP	Law Enforcement Assistance Program (Victoria Police)
NSW	New South Wales
VALS	Victorian Aboriginal Legal Service
VCAT	Victorian Civil and Administrative Tribunal
VLA	Victoria Legal Aid
WESNET	Women's Services Network
WLSV	Women's Legal Service Victoria

## Part 1

### *Aim of study*

In 2013 the Centre for Rural Regional Law and Justice (CRRLJ) released a report detailing *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria*.<sup>1</sup> The research was informed by in-depth, qualitative interviews with survivors of family violence<sup>2</sup> and workers who support survivors and their children, as well as court observations conducted at the Geelong, Heidelberg and Werribee magistrates' courts. The report (which is publicly available via the CRRLJ website) details the finding that while some women described positive experiences with police officers, magistrates and lawyers, the women respondents also found the court process to be intimidating and felt that there are limited opportunities to have their voices and concerns heard in court. Women spoke of the Family Violence Intervention Order (FVIO)<sup>3</sup> process as confusing and cited frequent breaches of FVIOs – of varied natures and severities – which were identified by women, lawyers and workers as the principal reason for the continuing failure of FVIOs. Court support was identified as reducing the anxiety experienced by applicants, but the provision of support was described as ad hoc, and lacking a streamlined process to connect all survivors who access the court. Overwhelmingly, women emphasised their concern with the impact of violence on their children and expressed their distress that children are not always named on the FVIO. Court wait times, limited safe, separate waiting areas at court and the need for more funding to enable access to expeditious and affordable legal advocacy were also identified as key issues of concern. Given these findings, Jordan and Phillips advocate for 'a more consistent approach to survivors seeking safety and justice' and 'increased levels of specialist training for all justice system personnel working on family violence cases'.<sup>4</sup>

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<sup>1</sup> Lucinda Jordan and Lydia Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria* (Deakin University, 2013).

<sup>2</sup> The term 'family violence' has been used in this report to refer to violence in relationships, involving not only intimate partner relationships but also more broadly other members of a family structure. Victorian women's support services and the legislation *Family Violence Protection Act 2008* (Vic) use this term as it is understood to be a more inclusive term than 'domestic violence', which typically refers to violence between intimate partners. Researchers acknowledge that for Indigenous communities, the term has a further meaning, referring to more expansive forms of abuses – including physical, emotional, spiritual, cultural, social, sexual and economic abuses – that can occur within intimate relationships, familial structures, extended families, communities and kinship networks, and should be understood in the context of colonialism and its continuing impacts.

<sup>3</sup> See glossary, 188.

<sup>4</sup> Jordan and Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong*, above n 1, part 1, 5.

This report draws and extends upon the 2013 report, in regards to the geographic areas, issues covered, and range of participants. It examines the experiences of and outcomes for women survivors of family violence in regional and rural<sup>5</sup> Victoria<sup>6</sup>, considering their contact with and perceptions of government agencies (including Victoria Police, the Victorian magistrates' courts and the Department of Human Services [DHS]) as well as private and community advocates (legal actors and services, women's services and family violence services) and healthcare professionals. Through this research, survivors have identified issues and barriers they have encountered in escaping family violence, and have provided suggestions in regards to how both the criminal justice system and the broader Victorian community might assist survivors and help prevent family violence. As well as being informed by survivors, this research includes insights provided by government and non-government practitioners and organisations who have offered their views on this report's key findings and recommendations. In addition to the generous contributions of these participants, this report utilises relevant data and emerging research in an effort to identify best practice responses to family violence; improve access to justice, support and safety; and protect and promote women's rights and entitlements.

### ***Executive summary***

This research combines the findings of two studies undertaken by the CRRLJ and explores the experiences of and outcomes for women and children survivors of family violence in regional and rural Victoria, examining their contact with and perceptions of government agencies (including Victoria Police, the Victorian magistrates' courts and DHS) as well as private and community advocates (legal actors and services, women's services and family violence services) and healthcare professionals. Issues and barriers facing survivors escaping family violence are identified, and survivors, support workers, legal actors and magistrates have offered suggestions as to how the criminal justice system and the broader Victorian community might assist in improving access to justice, and further support and protect survivors and their children.

This research employs a feminist legal methodological approach to research, focusing on and privileging the lived experience of survivors. Researchers conducted court observations and semi-structured interviews with survivors, workers, lawyers and magistrates. Additionally, in

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<sup>5</sup> See glossary, 189.

<sup>6</sup> The researchers acknowledge that both men and women can be perpetrators and survivors of family violence, although existing research and evidence indicate that family violence in Victoria in the vast majority of cases involves male perpetrators and women and children survivors.

developing recommendations to empower and enhance support, security and assistance for survivors, researchers engaged in extensive consultation with government and non-government agencies involved with responding to family violence.

Women who experience family violence face many barriers to obtaining assistance and access to justice. Those in regional and, even more so, rural locations encounter further challenges, including but not limited to geographic and social isolation, limited private finances, greater opportunities for the surveillance of survivors, challenges with maintaining anonymity and privacy, expensive private and limited public transport networks, limited crisis accommodation, less access to support and health services than is available in metropolitan areas, and limited access to legal services. They also face a greater likelihood of encountering conflict of interest<sup>7</sup> issues when seeking legal assistance, the 'digital divide'<sup>8</sup> when accessing information and assistance and perpetrator gun ownership. Services and support for Aboriginal and Torres Strait Islander (hereafter, ATSI) survivors,<sup>9</sup> culturally and linguistically diverse (CALD) survivors and survivors with disabilities are also more limited than those in metropolitan areas.

The majority of survivors interviewed for this research had experienced what can be regarded as lifetimes of family violence; that is, they experienced abuse both as children and/or later, as adults, in one or more long-term relationships. In the context of their lives, violence in its various forms – physical, sexual, emotional, psychological and financial – and threatening or coercive behaviours were often normalised and sometimes expected. Survivors commonly conveyed the difficulty they faced in identifying non-physical forms of abuse as family violence. Indeed, while support workers spoke of the many forms abuse can assume, survivors suggested that some private legal practitioners, magistrates and police officers did not always recognise, validate or understand the occurrence or impacts of non-physical violence.

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<sup>7</sup> On conflict of interest and recommendations about addressing and overcoming conflict of interest see CRRLJ report: Louise Kyle, Richard Coverdale and Tim Powers, *Conflict of Interest in Victorian Rural and Regional Legal Practice* (Deakin University, 2014).

<sup>8</sup> A digital divide exists when citizens do not have equal connectivity (adequate access, ability and affordability) to the Internet and ICT. On this issue in an e-learning legal context see CRRLJ report: Mary Dracup, *Linking Law: Practical Guidelines for Delivering Law to Rural Victoria Using E-learning Technologies* (Deakin University, forthcoming).S

<sup>9</sup> The researchers acknowledge that some ATSI peoples prefer the term Aboriginal, Koori or Indigenous. We have been guided by ATSI organisations in Victoria in using the term ATSI.

It was not uncommon for survivors to experience technology-facilitated abuse<sup>10</sup> (and to a lesser extent, technology-facilitated stalking)<sup>11</sup> while using information and communication technologies (ICT),<sup>12</sup> but the effect and seriousness of such abuse and stalking was not always recognised or responded to by police or magistrates. Survivors were frustrated when they received confusing or conflicting advice as to what evidence of technology-facilitated abuse and stalking will be accepted by police and admissible in court. In addition, survivors suggested that police were reluctant to respond to ICT communication that mentions children – even if such contact contravenes an established order – because it is frequently perceived to be a ‘family law matter’. A further concern revolved around the links between technology-facilitated stalking and stalking in person, indicating the numerous and invasive ways perpetrators monitored survivors and the subsequent impact on survivors’ safety and wellbeing.

Numerous survivors had positive experiences with police, both generalist and specialist, whom they described as sensitive, supportive and skilled; validating their experiences; demystifying criminal justice procedures and processes; providing links and referrals to support services;<sup>13</sup> and comforting and protecting their children. However, significant numbers of survivors had negative experiences with police, whom they described as intimidating; insensitive; dismissive; failing to provide information about their case or court proceedings; offering confusing or conflicting advice; pressuring survivors to accept undertakings;<sup>14</sup> delaying serving interim orders<sup>15</sup> and being reluctant to respond to breaches of FVIOs. Survivors had polarising experiences of police, suggesting that Victoria Police protocols in relation to family violence have not been uniformly implemented. Negative encounters with officers could result in a decision not to seek assistance from police at a later date.

Most interviewees had safety concerns in relation to court buildings. The older courts were particularly problematic because of the small size of waiting areas and the high level of visibility and lack of privacy in small towns. The wellbeing and security of children – often brought to court out of necessity – were also of concern.

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<sup>10</sup> See glossary, 190.

<sup>11</sup> See glossary, 190.

<sup>12</sup> See glossary, 188.

<sup>13</sup> See glossary, 189-90.

<sup>14</sup> See glossary, 190.

<sup>15</sup> See glossary, 188.

Women largely had positive experiences with court registrars; however, all interviewees spoke of the lack of privacy at the front desk in courts and the need for private spaces to discuss intervention orders. Additionally, women were not consistently referred to culturally appropriate legal advice to assist them with completing the FVIO application, which could result in the issuing of orders that were regarded as inadequate, most commonly because children were not included on FVIOs. This was particularly so for ATSI women.

Increasing and high numbers of FVIO applications place heavy burdens on the courts. Safety issues at court require additional attention beyond security and further resources for applicants and respondents in order to function effectively and efficiently. Family violence workers, lawyers and magistrates identified the benefit of having dedicated applicant and respondent workers in regional courts in terms of reducing the court time spent on matters and ensuring that applicants and respondents have supports in the community.

Generally women and workers were happy with their legal support. However, survivors spoke of the difficulties they faced in locating accessible and affordable legal advocacy and how the need in this area significantly exceeds supply. Funding cuts to Legal Aid,<sup>16</sup> community legal centres (CLCs)<sup>17</sup> and specialist family violence legal services will exacerbate unmet legal needs. The lack of Legal Aid for family law matters meant that family law and family violence issues were often conflated at the Magistrates' Court, which created pressures on women to consent to family law agreements without receiving appropriate legal advice prior to court. Workers and women also reported that they were put under great pressure from non-specialist family violence lawyers as well as respondent lawyers to consent to undertakings instead of FVIOs.

Women and workers alike regarded magistrates as important in highlighting the seriousness of family violence and its impacts on children. However, some magistrates were reluctant to include children on orders and the severe shortage of housing in regional and rural areas influenced whether or not magistrates would make exclusion orders.<sup>18</sup> Interestingly, the majority of magistrates were viewed positively by the interviewees, even when women did not get the orders that they wanted. However, some women, workers and lawyers identified magistrates whom they regarded as engaging in bullying, discourteous and unprofessional behaviours.

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<sup>16</sup> See glossary, 189.

<sup>17</sup> See glossary, 187.

<sup>18</sup> See glossary, 187.

Overall, survivors reported very positive interactions with support workers and services, which were said to help demystify police and court processes and provide advocacy for and empower survivors. While women had mixed (but on the whole, good) encounters with legal actors, their best encounters were with legal actors who were either formally or informally connected to services.

Each week general practitioners (GPs) see significant numbers of women who experience family violence and have a key role to play in assisting women; a survivor's encounter with her GP can influence and even determine her response to family violence. However, women had varied views on discussing and disclosing family violence to their GP, suggesting that there is an opportunity to revisit the contribution and support GPs can offer survivors.

The availability of housing (for both survivors and perpetrators of family violence) continues to be an overarching issue escalating the likelihood and continuation of family violence. The need for culturally appropriate housing that accommodates the entire family nucleus and survivors with disabilities or other special requirements is great, particularly in regional and rural areas.

In recent years, family violence (once classified as a 'private matter' or dismissed as 'a domestic matter') has received increased attention. However, there has been little recognition of the role of place in regards to family violence, of the particular obstacles faced by survivors in regional and rural locations, and of the challenges facing overburdened and under-resourced government and non-government agencies involved in preventing and responding to family violence. In addition to identifying barriers, this research seeks to outline strategies for reducing the incidence and impacts of family violence in regional and rural Victoria, challenge the structures and ideologies that contribute to the acceptance of violence and gender inequality, and protect and empower survivors and advocates.

### ***Recommendations***

The following recommendations have been informed by our interviews with survivors, workers, lawyers and magistrates and court observations, as well as extensive consultation with government and non-government agents involved in responding to family violence. The researchers acknowledge that these recommendations are resource intensive and require commitment from Commonwealth and state governments, government and non-government advocates and indeed the broader Australian community. However, such a response is undoubtedly necessary, given the incidence, harms and costs of family violence.

Recent estimates have indicated that one in three Australian women will experience violence during their lifetime and more than one million children are affected by family violence.<sup>19</sup> Male intimate partner violence is in fact the leading cause of illness, disability and death for Victorian women aged 15 to 44 years.<sup>20</sup> Family violence is also the most common factor contributing to homelessness among women and children.<sup>21</sup> Furthermore, in addition to the fatal consequences of family violence, there are long-term repercussions of and trauma associated with family violence.<sup>22</sup> Survivors of family violence can experience the lasting effects of physical injuries, as well as emotional and psychological tolls, which impact their lives in a myriad of ways, as discussed in this report. Additionally, family violence can impact mother–child relationships; a mother’s ability to parent; and the health, wellbeing, security and development of a child. Spatial issues – the impact of location – in regards to both the incidence and effects of family violence should also be considered. The rates of family violence and the risk to survivors in regional and rural Australia highlight the importance of extending advocacy to survivors outside metropolitan areas.<sup>23</sup>

Human rights are frequently perceived on a national or international scale, although community sector workers have – pre and post the introduction of the *Charter of Human Rights and Responsibilities Act 2005* (Vic) – contended that human rights need to be considered on an everyday, street (or indeed ‘home’) based level. In this vein, the researchers echo the calls of others in arguing that family violence needs to be framed as violating not only the *Family Violence*

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<sup>19</sup> The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children* (The National Council to Reduce Violence against Women and their Children, 2009) 11.

<sup>20</sup> VicHealth, *The Health Cost of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence* (Department of Human Services, 2004) 10.

<sup>21</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-2013* (Australian Institute of Health and Welfare, 2013) 78-83; Ilsa Evans, *Battle Scars: Long-term effects of Prior Domestic Violence* (Monash University, 2007) 28; Homelessness Taskforce, *The Road Home: A National Approach to Reducing Homelessness* (Department of Families, Housing, Community Services and Indigenous Affairs, 2009) 5, 7; Selina Tually et al., *Women, Domestic and Family Violence and Homelessness* (Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, 2008) 1.

<sup>22</sup> Evans, *Battle Scars*, above n 21, part 1, 13-15; VicHealth, *The Health Cost of Violence*, above n 20, part 1, 20.

<sup>23</sup> See, for instance: Crime Research Centre, *Rural Crime and Safety in Western Australia* (Department of Commerce and Trade, Perth) 8; Immigrant Women’s Domestic Violence Service, *The Right to be Safe from Domestic Violence: Immigrant and Refugee women in Rural Australia* (Immigrant Women’s Domestic Violence Service, 2006); Victoria Police, *Family Incident Reports* (Victoria Police, 2008-2013); Sarah Wendt, *Domestic Violence in Rural Australia* (Federation Press, 2009) 9; WESNET, *Domestic Violence in Regional Australia: A Literature Review* (WESNET, 2000), 3.

*Protection Act 2008* (Vic) but also broader legal and social human rights conventions.<sup>24</sup> Using a larger framework to understand family violence, academics and advocates have argued that family violence should be understood as a form of ‘intimate terrorism’.<sup>25</sup> This language has been adopted by some criminal justice agents. In her October 2014 sentencing of a family violence perpetrator, NSW Judge Jane Campton remarked, ‘domestic violence remains a serious social problem in our community ... a form of intimate terrorism’.<sup>26</sup> In the same month, discussing the threat and social impact of family violence at a Bendigo conference, advocates highlighted the disparity between the number of Australian deaths associated with terrorism and intimate terrorism and the funding (or, in the case of intimate terrorism, the defunding) of agencies involved in responding to these forms of violence.<sup>27</sup>

In considering responses to family violence it is vital to acknowledge the costs of such violence, which include direct and indirect costs associated with pain, suffering and advanced mortality; health services; production and productivity; lost wages; accommodation; damaged property; defaults on loans; criminal justice responses; child protective services; preventative initiatives; support programs; financial support; and victims services.<sup>28</sup> The estimated cost of family violence to the State of Victoria (excluding losses to women experiencing violence) is approximately 3.4 billion dollars per year.<sup>29</sup> Nationally, the economic cost of family violence to survivors, perpetrators, their networks of family and friends, communities, the private sector and the government has been, perhaps conservatively, estimated to be in excess of 8 billion dollars per

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<sup>24</sup> Though Wendt does not write specifically on the Victorian context, she talks of framing family violence in a human rights context. Sarah Wendt, ‘Building and Sustaining Local Co-ordination: An Australian Rural Community Responds to Domestic and Family Violence,’ (2010) 40 *British Journal of Social Work* 44-62, see 47.

<sup>25</sup> See glossary, 188. This term was coined by sociologist Michael P. Johnson in the 1990s. As Johnson explains ‘intimate terrorism is what most of us mean by “domestic violence”’. Michael P. Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press, 2008) 6, emphasis of text. Johnson has also referred to ‘patriarchal terrorism’, see Michael P. Johnson, ‘Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women’ (1995) 57:2 *Journal of Marriage and the Family* 283-94; Michael P. Johnson, ‘Two Types of Violence against Women in the American Family’ (Paper presented at the annual meetings of the National Council on Family Relations, Irvine, November 1999) 1-37.

<sup>26</sup> See, for instance, Steve Butcher, ‘Judge Jane Campton Slams John Grima Over Vicious Attacks on his Defacto Partner,’ *The Age* (Melbourne) 9 October 2014.

<sup>27</sup> Presented by Women’s Health Loddon Mallee, the conference ‘Violence Prevention – It’s Everybody’s Business’ took place in Bendigo, 7-8 October 2014.

<sup>28</sup> Evans, *Battle Scars*, above n 21, part 1, 24-29; Anthony Morgan and Hannah Chadwick, ‘Key Issues In Domestic Violence,’ (2009) 7 *Research In Practice Summary Paper* 1-11, 3; VicHealth, *The Health Cost of Violence*, above n 20, part 1, 23, 25.

<sup>29</sup> Office of Women’s Policy, *A Right to Respect: Victoria’s Plan to Prevention Violence Against Women 2010-2020* (Victorian Government, 2009) 9-11; State Government of Victoria, *Victoria’s Action Plan to Address Violence against Women and Children 2012-2015* (Victorian Government, 2012) 2, 27-29.

year.<sup>30</sup> In the context of such expense, demands for further investment in resources for overburdened and under-resourced agents who respond to violence are not unreasonable, but necessary, and could potentially improve access to justice; further empower, support and protect survivors and their children; promote rights and wellbeing; and reduce the harms, incidence and costs of family violence.

**Broader societal responses and primary prevention initiatives:** (see 42)

- ◆ Education: That DHS develop a program of regionally focused public awareness and educative campaigns around family violence, targeted at various regional and rural community sectors, to include:
  - hosting a series of public fora advocating for greater discussions of family violence in its various forms including emotional, psychological and financial violence and its harms and the right of women and children to live free from violence and the right of women to end and leave relationships
  - coordinating a suite of preventative campaigns in conjunction with local government, regional police leadership and other key sector stakeholders about family violence developed and delivered to men and organisations where men gather in regional, rural and remote areas
  - working with Regional Directors of the Department of Education to develop school based education programs around gender, relationships, family and ‘safe spaces’ to discuss violence and abuse.
  
- ◆ That DHS give greater priority to the planning and implementation of initiatives aimed at developing and extending sustainable and evidence-based primary preventative programs in regional and rural Victoria, including, for example:
  - the workplace
  - leisure and sporting associations
  - school settings

with strategies and initiatives formulated by non-government and government family violence workers, funded and promoted by state agencies.

These programs should consider:

- the subjugation of women
- sexism

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<sup>30</sup> Lesley Laing, *Australian Studies of the Economic Cost of Domestic Violence* (Australian Domestic and Family Violence Clearinghouse, 2001); Lesley Laing and Natasha Bobic, *Economic Costs of Domestic Violence* (Australian Domestic and Family Violence Clearinghouse, 2002) 18-33, Morgan and Chadwick, ‘Key Issues In Domestic Violence’, above n 28, part 1, 3. The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 19, part 1, 4.

- ATSI cultural awareness and history
  - racism
  - violence against women in public and private spaces
  - family violence myths
  - the right of women to end relationships.
- ◆ That a steering group led by DHS in conjunction with the Department of Premier and Cabinet develop a whole-of-government approach to ensure the promotion of programs and initiatives by all state agencies.
  - ◆ That preventative programs target high-risk groups such as ATSI women and children, women and children with disabilities, and CALD women and children.
  - ◆ That information about family violence and assistance be made more widely available throughout the community, including in print and online media, the offices of healthcare professionals and educational institutions.
  - ◆ That further culturally appropriate parenting programs be introduced or extended throughout regional and rural areas.

**Police-based reforms** (see 65-74, 135-138, 162-168)

***Further training is needed for Victoria Police officers (new recruits at the Police Academy as well as for serving officers) that is informed by specialist family violence agencies and explores:***

- ◆ the barriers facing and needs of survivors and their children in regional and rural areas
- ◆ the importance of validating survivors' experiences of family violence
- ◆ the impact on children of living with and witnessing family violence
- ◆ the connection between family violence and child sexual abuse
- ◆ the various forms of family violence, with greater emphasis on identifying and responding to non-physical forms of family violence and technology-facilitated abuse and stalking
- ◆ the admissibility of evidence pertaining to technology-facilitated abuse and stalking and breaches by ICT
- ◆ the difficulties and distress that survivors may experience when communicating with officers
- ◆ women's violent resistance

- ◆ the identification of the primary aggressor
- ◆ the importance of impartiality and conflict of interest guidance, when officers have social relationships with perpetrators<sup>31</sup>
- ◆ cultural training in regards to legacies of colonial policing and trauma associated with child removal and family violence in ATSI communities and ATSI familial structures and kinship networks, such as Aboriginal Cultural Awareness Training which is recommended by the *Koori Family Violence Police Protocols Initiative*<sup>32</sup>
- ◆ further training for recruits and serving officers provided by family violence services and specialist agencies (to enhance responses to violence experienced by CALD and ATSI survivors and survivors with disabilities)
- ◆ the capacity of Agricultural Liaison Officers, in particular receiving training around family violence and extending their outreach work (which currently focuses on farm crime) to include information pertaining to family violence.

#### ***Procedural and operational-based reforms***

- ◆ In line with the *Code of Practice*, that Victoria Police officer referrals to support services continue, including to specialist ATSI, CALD and disability services.<sup>33</sup>
- ◆ That officer referrals to respondent workers and men's services continue and be extended.
- ◆ That officer referrals to legal services be offered as standard practice.
- ◆ That safe, private spaces at police stations be utilised for women to discuss family violence with officers, as outlined in the Victoria Police *Code of Practice for the Investigation of Family Violence* (hereafter, the *Code of Practice*).<sup>34</sup>

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<sup>31</sup> Victoria Police Family Violence Coordination Unit, *Improving Access to Justice for Women and Children Survivors of Family Violence in Regional Victoria Project: Victoria Police Comments on Recommendations* (Victoria Police, 2014) 2 notes that 'Victoria Police expects all members to comply' with the *Code of Practice* 'regardless of their personal relationship with either party' and that supervision by senior managers 'should provide appropriate oversight to prevent potential non-compliance'.

<sup>32</sup> Developed in partnership between the Aboriginal Family Violence Prevention and Legal Service, ATSI communities, Victoria Police, Department of Justice and Department of Human Services. Aboriginal Family Violence Prevention and Legal Service Victoria, *Response to Key Findings and Recommendations* (Aboriginal Family Violence Prevention and Legal Service Victoria, 2014); Aboriginal Family Violence Prevention and Legal Service, *Koori Family Violence Police Protocols* (Aboriginal Family Violence Prevention and Legal Service, 2012).

<sup>33</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence* (Victoria Police, 3<sup>rd</sup> ed, 2014) 8, 11-13.

<sup>34</sup> See *ibid*, 8.

- ◆ That officers pre-arrange times with survivors for follow-up calls, times to meet with survivors at support agencies or times for women to visit the police station, where practical and safe.
- ◆ In the interests of providing a culturally appropriate response, that officers responding to family violence incidents ask survivors whether they or their children identify as ATSI, as outlined in the *Code of Practice*.<sup>35</sup>
- ◆ That Aboriginal Liaison Officers be immediately notified to attend family violence incidents that involve ATSI survivors or their children, as noted in the *Code of Practice*.<sup>36</sup> Where this is not possible, contact with Aboriginal Liaison Officers should be offered via telephone or remote video technology.
- ◆ That interim orders be served within a short, specified time frame, for instance, within 12 hours. In instances where respondents cannot be located, have absconded or are avoiding service, survivors should be notified while police efforts to serve the orders continue.<sup>37</sup>
- ◆ That police who initiate FVIO applications or, as Victoria Police has suggested, Family Violence Court Liaison Officers (who are being progressively implemented as part of the Victoria Police *Enhanced Family Violence Service Delivery Model*) attend court for the first FVIO hearing.<sup>38</sup>
- ◆ That officers maintain greater contact (ideally through the same Family Violence Liaison Officer) in regards to the status of survivors' cases and breaches, in accordance with the *Victims Charter Act 2006 (Vic)*.
- ◆ That police responses to breaches of FVIOs be more consistent, in compliance with the *Code of Practice*.<sup>39</sup>
- ◆ That Victoria Police further engage with regional and rural communities and government and non-government family violence workers with a view to exploring the barriers facing regional and rural survivors and strategies and initiatives to further assist and protect survivors and enhance responses to family violence.
- ◆ That the links between specialist family violence officers and the Victoria Police Sexual Offences and Child Abuse Unit be strengthened.

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<sup>35</sup> See *ibid*, 11.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Ibid*, 37.

<sup>38</sup> As outlined by in Victoria Police Family Violence Coordination Unit, *Improving Access to Justice for Women and Children Survivors of Family Violence in Regional Victoria Project: Victoria Police Comments*, above n 31, part 1, 1.

<sup>39</sup> See Victoria Police, *Code of Practice*, above n 33, part 1, 28-29.

- ◆ That the links between specialist family violence officers and the ‘specialised investigative assistance’ provided in regards to technology-facilitated abuse and stalking be strengthened.<sup>40</sup>
- ◆ In the interests of accountability and public transparency, where police breach the *Code of Practice*, that police complaint procedures be reviewed and revised.

### ***Resource-based reforms***

- ◆ That Family Violence Liaison Officers, Family Violence Advisors, Family Violence Court Liaison Officers, Family Violence Teams and associated programs and resources throughout regional and rural Victoria be extended.
- ◆ That greater numbers of Multicultural Liaison Officers be employed in regional and rural locations and accessible to further regions via the use of remote video technology.
- ◆ That funding and resources be provided to the Victoria Police Family Violence Coordination Unit or external consultancy bodies to investigate strategies for ‘more efficient service’ of interim orders and ‘more immediate protection for victims’.<sup>41</sup>
- ◆ That resources be increased (in particular, Family Violence Liaison Officers, Family Violence Advisors, Family Violence Court Liaison Officers, Family Violence Teams and associated programs and resources) throughout regional and rural Victoria in the aftermath of natural disasters.<sup>42</sup>

### ***Court reforms*** (see 74-112)

#### ***Court spaces and models***

- ◆ That new court design specifications incorporate best practice features of Family Violence Court including:
  - separate entrances and exits
  - safe spaces
  - children’s facilities
  - dedicated rooms for family violence services.
- ◆ That all regional courts in Victoria have the following features:<sup>43</sup>
  - specialist family violence funded applicant and respondent workers

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<sup>40</sup> Ibid, 24.

<sup>41</sup> Victoria Police Family Violence Coordination Unit, *Improving Access to Justice for Women and Children Survivors of Family Violence in Regional Victoria Project: Victoria Police Comments*, above n 31, part 1, 3.

<sup>42</sup> Such as flood, drought and fire – phenomenon not uncommon in rural areas.

<sup>43</sup> Some satellite courts are currently only used during part of a week or fortnight. Significant funding is required to ensure that these dedicated services are available in smaller rural settings.

- specialist family violence registrars (including dedicated ATSI and CALD specialist registrars)
  - specialist family violence prosecutors
  - magistrates, who specialise in family violence
  - funded CLC intervention order duty lawyer schemes
  - dedicated safe spaces for applicants
  - live offsite remote witness video capabilities.
- ◆ That all rural courts be, at the very least, outfitted with offsite remote witness video capabilities and adequately funded specialist family violence services (applicant and respondent workers, prosecutors and magistrates) who circuit rural courts.

### ***Personnel reforms***

- ◆ That increased training be provided for magistrates, court registrars, other court staff and court-based workers regarding:
  - family violence and its social context
  - Common Risk Assessment Framework (CRAF) training and its extension to management, including understanding high-risk contexts.
- ◆ That interpreters (for CALD survivors and hearing impaired survivors) and appropriate assistance for parties with cognitive impairment and communication difficulties be provided by the court for first mention hearings.
- ◆ That Men’s and Women’s Support Officer positions – part of the Koori Family Violence Court Support Programs – be filled.
- ◆ That new magistrate appointments be made with consideration of skills and experience in the family violence work that the court currently undertakes and that these appointments better reflect the diversity of the Victorian community.
- ◆ That contracted security services in courts receive training around family violence and security issues and have provision in their contracts permitting them to escort women to their cars or public transport stops after court, on request.

### ***Procedural and operational-based reforms***

- ◆ That registrar and court staff offer referrals to support and legal services as standard practice, with ATSI survivors referred to culturally appropriate referrals to family violence services or legal service and CALD survivors referred to specialist services such as inTouch.

- ◆ That courts create better online platforms so that family violence and legal workers can assist survivors in completing these forms offsite.
- ◆ That FVIO forms be changed to permit a lawyer to be the witness to the applicant's signature.
- ◆ That FVIO forms be changed to include a paragraph box on children's experience or witnessing of family violence.
- ◆ That times for FVIO court hearings be staggered throughout the Family Violence day list.
- ◆ That registrars speaking with survivors about applying for FVIOs do so in a private space.
- ◆ That court workers other than security staff provide a 'meet and greet' service (a role that is currently performed by some family violence workers) for those who attend court and provide:
  - relevant information in regards to locations and proceedings
  - advice on culturally appropriate support and legal services available within the local community.
- ◆ After court orders have been made, as a matter of practice, that registrars give applicants the paperwork and orders before the respondent to enable applicants to safely leave.
- ◆ That magistrates be able to make an order or finding on the FVIO that family violence matters deemed to exist have resulted in applicants and respondents being unable to co-reside, for the purpose of expediting Victorian Civil and Administrative Tribunal (VCAT) processes, so that courts can immediately forward the orders to VCAT (particularly for courts that do not have a VCAT sitting at the same court).

### ***Court complaint mechanisms***

- ◆ That material be made available in courts and services around complaint procedures against court staff.
- ◆ That factsheets on court complaint procedures be produced and posted online for general public access and service use.
- ◆ That an independent review of Magistrates' Court complaint procedures be undertaken, which then informs the implementation of the Judicial Commission, guided by key stakeholder submissions and recommendations.

### ***State government court-related reforms***

- ◆ That a quantitative and qualitative evaluation been done of self-executing FVIO Orders and their impact on FVIO breach rates.
- ◆ That there be better data collection of cases before the Magistrates' Court, particularly in regards to postcode area, to allow for comparisons between regions.

### ***Federal government court-related reforms***

- ◆ That a small property claims tribunal be established where family law property is less than \$100 000.

### ***Funding for court structures, programs and services***

- ◆ That funding be allocated to enable all existing and new regional and rural courts to create safe remote evidence rooms in existing offsite facilities (family violence services, police stations and health centres).
- ◆ That there be increased funding for interpreting services and access to interpreters, whether onsite or remotely offered.

### **Family violence support services** (see 123-126)

#### ***Extension of funding***

- ◆ That further Commonwealth and state government resources be allocated to family violence support services, which as a sector are currently overburdened and under-resourced.
- ◆ That further state government resources be allocated to specialised services, including those assisting children who have experienced family violence and sexual assault, ATSI and CALD survivors and survivors with disabilities (including but not limited to Centre Against Sexual Assault, FVPLS, inTouch and Women with Disabilities Victoria).
- ◆ That the *Making Rights Reality* pilot project<sup>44</sup> be extended, which offers persons who have experienced sexual assault and have a cognitive impairment and/or communication difficulty accessible crisis care, counselling, advocacy, legal information and advice and support through police investigations, prosecution and crimes compensation processes.

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<sup>44</sup> Conducted by the Federation of Community Legal Centres Victoria, South Eastern Centre Against Sexual Assault and Springvale Monash Legal Service.

- ◆ That Commonwealth and state government funding be provided for non-government family violence applicant workers who are available before, during and after court, in all courts.<sup>45</sup>

**Perpetrator services and supports** (see 126-127)

- ◆ That Men's Behaviour Change Programs for abusers (including but limited to regional and rural locations) receive further Commonwealth and state government funding, to meet existing needs, extend activities and supervision.
- ◆ That programs for abusers receive additional Commonwealth and state government resourcing, particularly in the aftermath of natural disasters.
- ◆ That Commonwealth and state government funding be provided for non-government family violence respondent workers who are available before, during and after court procedures, in all courts.<sup>46</sup>

**Legal services** (see 111-123)

***Extension of funding and revision of existing funding guidelines and policies***

- ◆ That Commonwealth Government funding guidelines to CLCs which prohibit systemic advocacy and law reform be reversed.
- ◆ That greater funding be provided to CLCs to respond to family violence and to generate community legal education material such as factsheets on:
  - family violence (emphasising the numerous forms of family violence) for communities as well as legal practitioners
  - planning and preparing for a day in court (including available supports, who and what to bring to court and information on childcare arrangements) for applicants and respondents
  - understanding FVIOs for applicants and respondents
  - varying FVIOs for applicants and respondents.
- ◆ That funding be provided for CLC family violence schemes at all courts:
  - to run a legal clinic one day a week at the court, to be advertised through family violence services and community agencies.

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<sup>45</sup> On the benefit of applicant and respondent workers see also research conducted by the Voices Against Violence project, such as: Georgina Dimopoulos and Elanor Fenge, *Voices Against Violence: Paper 3, A Review of the Legislative Protections Available to Women with Disabilities who have Experience Violence in Victoria* (Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2013) and Women with Disabilities Victoria, *Response to Key Findings and Recommendations* (Women with Disabilities Victoria, 2014).

<sup>46</sup> Ibid.

- to run duty lawyer schemes to enable the provision of legal assistance to all who need it in all courts where an FVIO is sought, including women seeking interim intervention orders.
- ◆ That Commonwealth and state government funding be increased and extended for traditional as well as alternative advocacy services (for instance, services offered through the Internet and ICT) such as – but not limited to – the ‘Women, Lawyers, Workers’ Skype Project.
- ◆ That Commonwealth and state government funding to specialist family violence legal workers within CLCs be increased to ensure that all those who need legal assistance at any stage of the process are able to access it.
- ◆ That Commonwealth Government funding cuts to FVPLS be reversed and funding guidelines for the *Indigenous Advancement Strategy* (guidelines that do not recognise FVPLS as a stand-alone program or confirm that legal services are eligible for such funding) be revised.
- ◆ That state government funding for specialist family violence legal services, such as Emma House, be continued and expanded beyond 2015.

**Crisis, short- and long-term housing** (see 57-59, 102-103)

- ◆ That Commonwealth and state government resources be increased so that further safe and holistic emergency accommodation is provided in regional and rural areas.
- ◆ That short- and long-term social housing options be improved in regional and rural areas.
- ◆ That crisis accommodation be made available to house survivors and their children, including those who are over the age of eighteen.
- ◆ That further crisis accommodation for survivors with disabilities and survivors with children with disabilities, including children over the age of eighteen who are excluded from other forms of crisis accommodation, be made available.
- ◆ That culturally appropriate residences be made available that are managed by ATSI workers and can accommodate the whole family nucleus.
- ◆ That the Commonwealth Government re-sign, and adjust for inflation, the National Partnership Agreement on Homelessness for a further four years, for services that assist women and children fleeing family violence.

- ◆ That funding by Commonwealth and state governments be increased to expand emergency and medium-term accommodation for single men to assist women and children to safely remain in their home.

**General practitioners** (see 129-133)

***Training-based reforms to assist GPs in:***

- ◆ better identifying possible presentations, signs and symptoms of family violence
- ◆ relation to the barriers facing survivors of family violence, including those in regional and rural locations
- ◆ responding to suspected cases and disclosure of family violence
- ◆ documenting abuse
- ◆ addressing the safety issues of survivors (aided by CRAF training).

***Procedural and operational reforms***

- ◆ As identified in service and industry guidelines, that GPs be encouraged to continue to make and extend their referrals to support services (including to ATSI, CALD and disability services).
- ◆ That GPs ensure that women meet with them alone and that, as a sector industry, GPs with government and non-government agencies who respond to family violence consider developing appropriate protocols whereby they flag cases (possibly alerting women's or family violence services) when women are not given the opportunity to meet with their GP alone.
- ◆ That GPs have greater formal and informal engagement with family violence services, including with workers from disability, CALD and ATSI services.
- ◆ When GPs are issuing a mandatory report to Child Protection, if it is safe to do so, that GPs and Child Protection practitioners work with the protective mother to consider the safety of women if and when Child Protection investigates the reports.

**Counsellors** (see 133-135)

- ◆ That counsellors have family violence training which adequately equips them in understanding the nature and legal implications of family violence and to assist them in considering appropriate action / advice within this environment.

**DHS practitioner response recommendations** (see 135-150)

***Training-based reforms***

- ◆ That Child Protection practitioner policy and training models as outlined in *Working with Families Where an Adult Is Violent: Best Interests Case Practice Model – Specialist Practice Resource* (hereafter referred to as *Working with Families Where an Adult is Violent*) continue with, as the guide identifies, an emphasis on:<sup>47</sup>
  - providing holistic responses that support both children and parent survivors of family violence
  - reducing the need to remove children from the care of their non-violent parent
  - recognising the ways perpetrators can impact on the mother–child relationships as well as the phenomenon of ‘mother blaming’
  - acknowledging their role in the context of ATSI trauma and the removal of ATSI children
  - understanding the connections between violence between intimate partners and child sexual abuse
  - technology-facilitated abuse and stalking as signifying risk to survivors and their children
  - risk assessment of family violence to women, where children have been referred to DHS.
  
- ◆ That a significant commitment be made to providing Aboriginal Cultural Awareness Training for Child Protection practitioners.
  
- ◆ That DHS training sessions and programs (informed by the *Working with Parents with Learning Difficulties* program<sup>48</sup>, the *Workforce Development on Gender and Disability project*<sup>49</sup>, the *Violence Against Women project*<sup>50</sup> and the *Working with Families Where an Adult Is Violent* resource<sup>51</sup>) continue to recognise:
  - and seek to reduce the anxiety and stigma associated with Child Protection engagement with survivors with disabilities

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<sup>47</sup> Jenny Dwyer and Robyn Miller, *Working with Families Where an Adult is Violent: Best Interests Case Practice Model Specialist Practice Resource* (Victorian Government Department of Human Services, 2014) 18.

<sup>48</sup> Developed in response to a Victorian Ombudsman Inquiry and a report; Parents with a Disability Community Network, *Our Forgotten Families: Issues and Challenges Faced by Parents with Disabilities in Victoria* (Parents with a Disability Community Network, 2010).

<sup>49</sup> This organisational change program, which seeks to improve gender sensitive practice among disability workers, was funded by the Victorian Government and developed and delivered by Women with Disabilities Victoria.

<sup>50</sup> Completed by Women with Disabilities Victoria, the Office of the Public Advocate and the Domestic Violence Resource Centre Victoria.

<sup>51</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1.

- that survivors with disabilities have their children removed at high rates and seek to engage with support services to reduce this.
- ◆ That rural-based training undertaken by DHS practitioners be continued, extended and informed by workers at Women’s Health Goulburn North East and other relevant services on the escalation of violence after natural disasters.<sup>52</sup>

### ***Procedural-based reforms***

- ◆ That Child Protection practitioners endeavour to make perpetrators more visible in casework, as outlined in the *Working with Families Where an Adult is Violent* resource.
- ◆ That Child Protection practitioners inform women about the role of social workers when DHS is involved with their case, to ensure women understand that the information they disclose can result in practitioners removing their children.
- ◆ That Child Protection agents assume an active role in directing survivors to appropriate services and supports.
- ◆ When investigating statements made by mandatory reporters, that Child Protection practitioners consider the safety of women:
  - who may be in a precarious situation, such as women residing with or in a relationship with their abuser, or
  - in cases where a woman’s disclosure to a mandatory reporter is known or suspected by her abuser.
- ◆ That DHS agencies ensure consistent implementation of ATSI child placement principles with provisions that require referral of ATSI families for culturally safe legal assistance.
- ◆ That DHS practitioners extend referrals to Men’s Behaviour Change Programs.

### ***Government roles and responsibilities in regards to DHS policies and practices***

- ◆ That Commonwealth and state governments acknowledge the evidence and impacts of family violence on Child Protection notifications and interventions, by funding proven effective and supportive interventions for victims within the process, and developing best practice guidelines for human services departments, nationally.

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<sup>52</sup> See, for instance: Debra Parkinson, *The Way He Tells it: Relationships after Black Saturday, Vol.1 Executive Summary and Recommendations* (Women’s Health Goulburn North East, 2011); Claire Zara and Debra Parkinson, *Men on Black Saturday, Risk and Opportunities for Change, Vol. 2 The Men’s Accounts* (Women’s Health Goulburn North East, 2013); Cathy Weiss, Claire Zara and Debra Parkinson, *Men on Black Saturday: Risks and Opportunities for Change, Vol. 3 Men, Masculinity, Disaster; A Literature Review* (Women’s Health Goulburn North East, 2013).

- ◆ That Commonwealth and state governments provide funding for ATSI community-led programs that address the systemic disadvantage that leads to contact with the child protection system, especially early intervention and prevention programs.
- ◆ That Commonwealth and state governments recognise the importance of fostering cultural connections for ATSI children and resource culturally safe programs that work with children to re-establish and maintain cultural links.

#### **Technology-facilitated abuse and stalking** (see 151-168)

- ◆ That Commonwealth and state governments provide funding for services<sup>53</sup> responding to technology-facilitated abuse and stalking, to extend their advocacy and inform and strengthen broader state and national responses to these issues.
- ◆ That responses to technology-facilitated abuse and stalking provide information to enable women to better protect themselves without needing to disengage from ICT, while emphasising the role and responsibility of perpetrators.
- ◆ That current and future responses to technology-facilitated abuse and stalking focus on perpetrators.

#### **Silent electors on the Commonwealth electoral roll**

- ◆ That only a silent elector's name and the wording 'address suppressed' be publicly available on the Commonwealth electoral roll.

#### **Royal Commission**

- ◆ That, should a Royal Commission exploring family violence in Victoria be conducted, it is informed by relevant commissions and inquiries as well as key stakeholders, and operates beyond any one government and implements recommendations and changes without delay.

#### **'Failure to protect' legislation: clause 4 of the Crimes Amendment (Protection of Children) Bill 2014 (Vic)** (see 147-150)

- ◆ Recently proposed legislation that potentially penalises women in abusive relationships for failing to protect their children and disclose their abuse is, as the *Cummins Inquiry*<sup>54</sup>

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<sup>53</sup> Victorian services (in particular the Domestic Violence Resource Centre Victoria) and national bodies (such as the Women's Services Network – WESNET – including its Safety Net Australia program) are world leaders in both research relating to and training in responding to technology-facilitated abuse and stalking.

<sup>54</sup> Philip Cummins, Dorothy Scott and Bill Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry Volume 2* (Department of Premier and Cabinet, 2012) 330, 359, 360.

and a network of Victorian family advocates have discussed<sup>55</sup>, problematic and places responsibility for violence on women rather than their abusers. As this research demonstrates, in addition to women prioritising the safety of their children, threats to the safety of their children often prompt survivors to escape family violence. It is not useful to threaten women who have not left abusive relationships. The researchers recommend that this legislation be repealed and that state responses to family violence should instead consider ways to assist and advocate for women, informed by consultation with Victorian family violence workers.

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<sup>55</sup> Such as: Women's Legal Service Victoria et al., *Submission to the Victorian Government in Response to the Discussion Paper on Proposed 'Failure to Protect' Laws* (Women's Legal Service et al, 2011).

## ***Structure of this report***

**Part 1** of this report commences with the aim of the study, and then presents the executive summary and an outline of the key findings. The report recommendations follow.

**Part 2** provides an introduction to the research and to family violence in the context of survivors' lives. A description of the methodology is followed by a discussion of Victorian responses to family violence; measuring the extent of family violence; the harms, impacts and costs of family violence; the definition of family violence; the normalisation of family violence; and intergenerational 'cycles' of violence. It then concludes with a consideration of survivors' positioning of the violence they experience within a broader context of male violence and their desires for broader social change to combat unequal power relations and violence against women.

**Part 3** explores the barriers facing survivors of family violence in regional and rural areas; geographic and social isolation; visibility; the visibility and invisibility of CALD survivors; gun ownership and homemade weapons; limited alternative and crisis accommodation; reduced access to support services and legal services, and the impact of disaster phenomenon. It concludes with a consideration of how technology might be used to overcome some of these barriers, including a case study of a recent initiative by advocates.

**Part 4** investigates the experiences of and outcomes for women survivors of family violence in the criminal justice system in regards to police and the setting of the Victorian magistrates' courts.

**Part 5** reviews survivors' interactions with lawyers and with women's and family violence support services and perceptions of Men's Behaviour Change Programs.

**Part 6** assesses healthcare sector responses to family violence and issues pertaining to child welfare and parenting, child sexual assault, Child Protection, post-separation parenting, mother blaming, and children as motivating responses to family violence.

**Part 7** examines the nature and impacts of and responses to technology-facilitated abuse and stalking.

**The appendix** of this report contains a glossary and documents relating to future responses to family violence, including best practice models that incorporate the ideal characteristics of family violence magistrates. Supporting documents such as question and interview prompts, plain language statements, and consent and withdrawal of consent forms for survivors and workers are also provided.



## Part 2: Introduction

### *Methodology*

A feminist legal methodological approach to research has been adopted in this report, which seeks to respectfully capture the lived experience of women survivors as well as record and legitimate their stories and knowledge.<sup>1</sup> Such an approach is characterised more by its ideology and values than its processes and, in the context of this research, means that we have openly privileged survivors' accounts of their experiences with the agencies and actors involved in responding to family violence. In the past the voices of women who have experienced violence have not always been given much focus in research. In prioritising survivors' accounts we have given both voice and context to their perspectives and concerns about responses to family violence in regards to policy and practice. However, the perspectives and voices of those involved in responding to family violence have not been excluded from this research. In addition to interviewing workers, lawyers and magistrates, recognising the contribution and expertise of government and non-government agencies, the researchers conducted extensive consultations with these groups.

### **Interviews**

The researchers prepared an application for the Deakin University Human Research Ethics Committee, which was approved on 1 October 2012 (number 2012-262) and complies with the National Statement on Ethical Conduct in Research Involving Humans. A series of in-depth qualitative interviews with thirty women<sup>2</sup>, nineteen lawyers, twenty-four family violence workers and three magistrates were then conducted.<sup>3</sup> The number of participants is significant, yet it is the qualitative rather than quantitative nature of the research that is the focus of this project. The interviews were semi-structured – an approach that provided an outline to interviews while ensuring that interviewees could share their experiences in their own words and could not only

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<sup>1</sup> Jordan and Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong*, above n 1, part 1, 11; Rebecca Campbell and Sharon M. Wasco, 'Feminist Approaches to Social Science: Epistemological and Methodology Tenets' (2000) 28 *American Journal of Community Psychology*, 773-91, 783; Heather Douglas, 'Battered Women's Experiences of the Criminal Justice System: Decentering the Law' (2012) 20 *Feminist Legal Studies*, 121-34, 129.

<sup>2</sup> **Please note that pseudonyms have been used throughout this report and that the authors have not included any participant's real name.**

<sup>3</sup> Some interviews with lawyers and family workers were conducted in group settings.

contribute to, but also shape the direction of the discussion.<sup>4</sup> The researchers agree with Nancarrow that ‘the flexible nature of the semi-structured interview process accommodates a feminist approach’.<sup>5</sup>

All participants were provided with written information about the project in the form of a plain language statement (see Appendix), which outlined the research aims and benefits, what participation would involve, how participants could withdraw from the research or make a complaint about the research, and how participant information would be securely stored. Interviews ranged between 20 minutes and 2 hours, depending on how much information participants wanted to share. In deciding which locations to base this study, researchers were guided both by available services and incidents of family violence, as outlined in Victoria Police’s *Family Incident Reports* (reviewed from inception in 2008).<sup>6</sup>

All survivors interviewed for this study were engaged with support services prior to meeting with researchers and researchers ensured that survivors had the opportunity to discuss their potential involvement in the project with a support worker prior to their involvement. Support workers discussed the project with women who were interested in participating, and then allocated women a convenient time to meet with researchers. In order to determine the capacity of survivors to consent to participating in an interview, the researchers began their sessions by engaging in general conversation regarding the nature of the research project. The researchers continued with the interview if they were confident that the survivor had understood the aims of the research and the nature and extent of their participation. In affirming the ability of the survivor to provide informed consent, the researchers also liaised with workers who were supporting these survivors. No specific mechanisms or processes were utilised in regards to individuals who were interviewed in a professional capacity.

The researchers used a series of interview prompts (see Appendix) to guide the interviewees. For instance, each woman was asked about the following: the length of time she had lived in regional or rural Victoria; her experiences of family violence; bodies or channels through which she had sought assistance and her perceptions of this assistance; her assessment of criminal justice responses to family violence; her recommendations for how survivors might be otherwise or better assisted, and encouraged to report family violence and continuing family violence; her

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<sup>4</sup> James A. Holstein and Jaber F. Gubrium, ‘Active Interviewing’ in David Silverman (ed) *Qualitative Research: Theory, Method and Practice* (Sage, 2<sup>nd</sup> edn, 2004) 140-61.

<sup>5</sup> Heather Nancarrow, *In Search of Justice in Domestic and Family Violence* (MA, Griffith University, 2003) 29.

<sup>6</sup> Victoria Police, *Family Incident Reports*, above n 23, part 1.

thoughts on how family violence might be prevented; and what she would say or suggest to a fellow survivor of family violence.

In locating lawyers and workers to interview, researchers consulted family violence services and networks, Family Violence Regional Integrated Coordinators, CLCs and migrant resource centres for their recommendations for agencies and participants for the research.<sup>7</sup> The Family Violence Prevention and Legal Service (Vic) provided links to ATSI contacts directly and indirectly. Contact was initiated most commonly by way of a phone call followed up by email. Lawyers and workers were asked about the agency in which they worked; their main duties and responsibilities, and the duration they had worked in their role; how frequently and in what circumstances they come into contact with women who have experienced family violence, and who typically initiates this contact; the kinds of assistance and support most commonly requested by survivors; the types of processes in place to respond to the needs of survivors; referral processes in place within their organisation; their perceptions of the barriers to survivors' accessing the justice system, both generally and in a regional and rural context in particular; and their suggestions for improving access to justice for survivors. Survivor and worker interviews were conducted over the telephone, at support services or at places chosen by the participant, places they felt comfortable and secure.

A grounded theory methodology was employed to analyse the findings captured from the interviews, with data (transcribed interviews) entered into the NVivo software program for cross-coding analysis. The researchers applied memos – preliminary analytical notes – to the data so as to identify tentative analytic categories. In the coding process researchers completed provisional and then selective focused coding to identify themes to emerge from the stories and from the experiences shared by both survivors and workers.<sup>8</sup>

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<sup>7</sup> Family Violence Regional Integration Coordinators (also referred to as 'RICs') convene maintain and support partnerships between key government and non-government stakeholders, including: women's, men's and children's services, mental health and homeless services, Child Protection, Victoria Police, and courts. Coordinators convene Family Violence Regional Integration Committees that meet to identify issues in and enhance response to family violence matters.

<sup>8</sup> On this process as a research strategy and the use of NVivo see for instance: Pat Bazeley and Kristi Jackson, *Qualitative Data Analysis with NVivo* (Sage, 2<sup>nd</sup> edn, 2013); Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (Sage, 2006); Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (Sage, 2009).

### **Court observations**

The researchers visited a number of Victorian courts – namely those at Geelong, Heidelberg, Werribee (in phase one of this research) and Morwell, Mildura, Swan Hill, Robinvale, Warrnambool and Colac (in phase two of this research) – and observed the court setting and practices. The court space itself was studied, including the number of rooms available for court users and services, the placement of toilets and other facilities, the waiting area and security features. Operational observation included watching processes at the registrar’s desk as people announced their arrival, identifying the available pamphlets and posters on family violence and services available in the area, and sitting in on court hearings of family violence matters. The researchers took detailed notes of their observations of applicants, respondents, their advocates and magistrates. On some visits the researchers were unannounced; on others they notified the registrars of their presence and, on several occasions, were invited to meet with magistrates to discuss the research project and their views on the issues.

### **Consultation process**

The second component of this research involved consultation with an array of agencies involved in responding to family violence. In developing draft recommendations, the researchers reviewed academic, community and government literature and the recommendations of survivors, support workers, lawyers and magistrates as to how the criminal justice system and the broader Victorian community might aid in improving access to justice, and further empower, support and protect survivors and their children. Draft recommendations were revised after consultation with the project reference group (consisting of academics and family violence workers), and a series of government and non-government agencies and agents involved in responding to family violence were invited to review this document. A wide-ranging list of stakeholders was compiled by the researchers based on their knowledge of and research on agencies, and those named and recommended by other stakeholders and academics. The researchers acknowledge that this list is not exhaustive, yet endeavoured to consult as widely as possible; given their many roles and responsibilities, not all stakeholders were able or willing to contribute to this research. Feedback was provided in a number of ways: in oral and written form, formally and informally, anonymously and authored.

## ***Responding to family violence in Victoria***

In Victoria, emergency accommodation for women was first introduced within the context of religious, charity-based initiatives. Although these were worthy enterprises, ‘their intervention into women’s lives could often be disempowering and autocratic’.<sup>9</sup> Following on from these initiatives, feminist refuges – which offered emergency accommodation for women – emerged in the 1970s, in recognition of the fact that female homelessness was commonly linked to family violence (although it was likely termed ‘domestic violence’ then).<sup>10</sup> Their response to domestic violence must be acknowledged as exceptional; at the time, domestic violence ‘did not exist as a named social problem, let alone as part of government public policy agenda’.<sup>11</sup> ‘In a climate of international and national activism’ (including the women’s and feminist movements) members of the feminist refuge movement (who we would now understand to be advocates operating within domestic and family violence services) brought what had once been regarded as a ‘private matter’ into the public realm by insisting that the state and broader community assume a proactive role in responding to violence within the home sphere.<sup>12</sup> Throughout the 1970s and 1980s, family violence was identified as an issue of public policy concern, in part as a response to the feminist movement’s articulation of and activism around violence against women.<sup>13</sup> Conceptualisations of feminism and domestic violence had typically universalised ‘the experiences of middle-class, Anglo, able-bodied and heterosexual women’, but these were challenged as, from the 1980s onwards, groups that were sometimes marginalised by the movement – CALD women, ATSI women and women with disabilities, for example - became active in ‘responding to and promoting the needs of women in their communities for such services’.<sup>14</sup>

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<sup>9</sup> Jacqui Theobald, ‘Women’s Refuges and the State in Victoria, Australia: A Campaign for Secrecy of Address,’ (2014) 23:1 *Women’s History Review* 60-81, 63.

<sup>10</sup> Jacqui Theobald, ‘Collaboration, Confrontation and Compromise: A History of the Victorian Domestic Violence Services Movement,’ (2012) 1 *DVRCV Quarterly* 9-12, 9; Theobald, ‘Women’s Refuges and the State in Victoria,’ above n 9, part 2, 63. See also: Suellen Murray, *More than Refuge: Changing Responses to Domestic Violence* (University of Western Australia Press, 2002); Liz Orr, ‘The Women’s Refuge Movement in Victoria,’ in Wendy Weeks (ed) *Women Working Together: Lessons From Feminist Women’s Services* (Longman Cheshire, 1994) 208–218.

<sup>11</sup> Jacqui Theobald, ‘A Long History: The National Plan in Context’ (2011) 24:8 *Parity* 6-8, 6.

<sup>12</sup> Ibid, 10. See also: Hilary Astor and Rosalind F. Croucher, ‘Fractured Families, Fragmented Responsibilities: Responding to Family Violence in a Federal System’ (2010) 33:3 *University of New South Wales Law Journal*, 854-69, 854-55; Theobald, ‘Women’s Refuges and the State in Victoria,’ above n 9, part 2, 61-63.

<sup>13</sup> Suellen Murray and Anastasia Powell, ‘“What’s the Problem?” Australian Policy Constructions of Domestic and Family Violence’ (2009) 15: 5 *Violence against Women* 532-552, 532; Theobald, ‘Collaboration, Confrontation and Compromise’, above n 10, part 2, 10.

<sup>14</sup> Jacqui Theobald, ‘“Passion around Violence against Women”: Billi Clark and the Victorian Domestic Violence Services Movement’ in Fiona Davis, Nell Musgrove and Judith Smart, *Founders, Firsts and Feminists: Women*

The past few decades have seen Liberal Coalition and Labor governments alike and various state agencies develop responses to family violence, in the form of taskforce investigations, government inquiries, specific legislation pertaining to family violence, court service provision and specialist courts, and procedures and units within policing bodies.<sup>15</sup> Speaking to the Victorian response, Theobald notes that ‘Victoria in recent years has attempted a concerted whole-of-government response to domestic violence, involving collaboration that includes the court and the police’<sup>16</sup>, and a coordinated initiative known as the *Women’s Safety Strategy*.<sup>17</sup>

### ***Measuring the extent of family violence***

*Despite the plethora of services, programs, legislations, and government investment designed to tackle violence against women – which has real impacts on the daily lives of countless women and children – the incidence of violence remains widespread, and the intractability of the problem is indicated by its responsibility for causing major health problems for women and substantial economic costs.*<sup>18</sup>

Today, state bodies and the broader Australian community have acknowledged that family violence is a significant issue. It is, however, difficult to measure the extent of family violence, and academics and practitioners have indicated that it is still drastically under-reported.<sup>19</sup> When we compare family violence with other forms of violence, women who experience family violence are less likely to identify their abuse as violence, disclose their abuse, seek support, or formally respond to the violence by reporting it to police or commencing court proceedings.<sup>20</sup> Recent estimates have indicated that one in three Australian women will experience violence during their lifetime and more than one million children are affected by family violence.<sup>21</sup> A 2012 study produced by the Victim Support Agency found that over the previous eleven years there had been

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*Leaders in Twentieth-Century Australia* (eScholarship Research Centre, University of Melbourne, 2011) 248-260, see 241, 251.

<sup>15</sup> Suellen Murray, ‘An Impossibly Ambitious Plan? Australian Policy and the Elimination of Domestic Violence’ (2005) 38 *Just Policy: A Journal of Australian Social Policy* 27-33, 31; Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention – Monitoring Report* (Sentencing Advisory Council, 2013) 3, 13, 44; Theobald, ‘A Long History’, above n 11, part 2, 10; Theobald, ‘Women’s Refuges and the State in Victoria’, above n 9, part 2, 65-66.

<sup>16</sup> Theobald, ‘Collaboration, Confrontation and Compromise’, above n 10, part 2, 10.

<sup>17</sup> Office of Women’s Policy, *Women’s Safety Strategy: A Policy Framework* (Office of Women’s Policy, Department of Premier and Cabinet, 2002).

<sup>18</sup> Theobald, ‘A Long History’, above n 11, part 2, 6.

<sup>19</sup> See, for instance: Kerry Carrington and Russell Hogg, *Policing the Rural Crisis* (Federation Press, 2006) 147-161. On reluctance to disclose violence see: VicHealth, *The Health Cost of Violence*, above n 20, part 1, 17.

<sup>20</sup> VicHealth, *The Health Cost of Violence*, above n 20, part 1, 17.

<sup>21</sup> The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 19, part 1, 11.

an 82 per cent increase in the number of incidents reported to Victoria Police.<sup>22</sup> More recent Victoria Police data also indicates a significant increase in ‘family incidents’ reports (60,829 during 2012–13 – an increase of 21.6 per cent) and in the number of charges issued (25,574 – an increase of 42.1 per cent).<sup>23</sup>

While the scale and impact of family violence should not be understated, it is important to note that increased numbers of incidents and charges do not, in and of themselves, translate into increased levels of family violence. Police statistics can, for instance, provide an incomplete image of crime on the basis that not all incidents are reported to police.<sup>24</sup> The reasons for reluctance to formally report family violence can include: ‘inconvenience; systemic resistance to the prosecution of offenders; further conflict with the perpetrator; and negative financial and family consequences to the victim’.<sup>25</sup> Additionally, while surges in family violence have been observed in statistics, the development of Victoria Police policy and practices relating to family violence as well as reforms in the court and welfare sector over the past decade have undoubtedly resulted in increased family violence reporting and recording of incidents.<sup>26</sup> In this vein, while the Victim Support Agency also noted that there had been increases in the number of children listed as affected family members<sup>27</sup> (24,180 were listed as present in 2012 – a number that had “tripled since the report commenced”), this increase cannot be solely attributed to higher numbers of children experiencing family violence. In part, at least, escalating numbers are a result of greater recognition that children are impacted by family violence, and growing awareness that children are victims in their own right.<sup>28</sup>

In 2006 Hogg and Carrington noted the limited information in regards to family violence more broadly, and specifically, in regards to place based comparisons.<sup>29</sup> As Wendt observes, it is difficult

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<sup>22</sup> Victims Support Agency, *Victorian Family Violence Database Volume 5: Eleven Year Report – Key Findings* (Department of Justice, 2012) 1.

<sup>23</sup> Victoria Police, *Crime Statistics 2012-2013* (Victoria Police, 2013) 21.

<sup>24</sup> Frank Morgan and Joseph Clare, ‘The Distribution of Crime Over Populations, Space and Time,’ in Marinella Marmo, Willem de Lint and Darren Palmer (eds), *Crime and Justice: A Guide to Criminology* (Lawbook Co., 4<sup>th</sup> ed, 2012) 25-52, 30. Frank Morgan and Don Weatherburn, ‘The Extent and Location of Crime,’ in Andrew Goldsmith, Mark Israel and Kathy Daly (eds), *Crime and Justice: A Guide to Criminology* (Lawbook Co., 3<sup>rd</sup> ed, 2006) 15-44.

<sup>25</sup> Anna Ferrante et al., *Measuring the Extent of Domestic Violence* (The Hawkins Press, 1996), 6.

<sup>26</sup> Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices*, above n 15, part 2, 3, 13, 44-46, 49.

<sup>27</sup> See glossary, 187.

<sup>28</sup> Victims Support Agency, *Victorian Family Violence Database Volume 5*, above n 22, part 2, 2.

<sup>29</sup> Hogg and Carrington, *Policing the Rural Crisis*, above n 19, part 2, 147-148.

to definitively determine that incidents of family violence are higher in non-metropolitan locations.<sup>30</sup> Carrington and Scott warn:

[c]aution also needs to be taken to avoid the ecological fallacy of assuming that every rural area has a higher rate of violence.<sup>31</sup>

Nonetheless, Australian research has suggested violent crime (such as family violence) occurs on greater levels in regional, and even more so, in rural and remote locations.<sup>32</sup> Echoing Ferrante et al.'s 1996 study,<sup>33</sup> in 1998 the Crime Research Centre found that women living in rural (and places we could also identify remote) regions of Western Australia had higher rates of reported violence than those living in metropolitan regions, which the authors believed indicated 'generally higher rates of domestic violence in rural areas'.<sup>34</sup> Likewise, in their 2001 review of Supported Accommodation Assistance Program data, Women's Services Network (WESNET) concluded that there were higher incidents of family violence in rural and remote locations, as compared to metropolitan places.<sup>35</sup> Furthermore, informed by police and court data, Victorian Public Hospital Emergency dataset, Supported Accommodation and Assistance data, Child Protection substantiations as well as perceptions of community safety, Women's Health Grampians concluded that rates of family violence were higher in the Grampians region than in metropolitan Melbourne.<sup>36</sup>

Reviews of Victoria Police's *Family Incident* report statistics seem to also affirm that higher rates of family violence reports occur in non-urban places.<sup>37</sup> Furthermore, as Hogg and Carrington, writing on 'hidden violence' note and CRRLJ researchers discuss further in this report, women residing in regional and rural places encounter barriers in reporting and seeking assistance from family violence and so it is highly possible (if not highly likely) that the incidents of family violence

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<sup>30</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 9.

<sup>31</sup> Kerry Carrington and John Scott, 'Masculinity, Rurality and Violence,' (2008) 48 *British Journal of Criminology* 641-666, see 647.

<sup>32</sup> Ibid, 644-9; Ferrante et al., *Measuring the Extent of Domestic Violence*, above n 25, part 2, 36-7; Russell Hogg and Kerry Carrington, 'Crime, Rurality and Community,' (1998) 31 *Australian and New Zealand Journal of Criminology* 160-81, see 164; Russell Hogg and Kerry Carrington, 'Violence, Spatiality and Other Rurals,' (2003) 36:3 *Australian and New Zealand Journal of Criminology* 293-319, 302.

<sup>33</sup> Ferrante et al., *Measuring the Extent of Domestic Violence*, above n 25, part 2, 36-7.

<sup>34</sup> Crime Research Centre, *Rural Crime and Safety in Western Australia*, above n 23, part 1, 8.

<sup>35</sup> WESNET, *Domestic Violence in Regional Australia*, above n 23, part 1, 3.

<sup>36</sup> Women's Health Grampians, *Violence against Women in the Grampians Region: Policy, Initiatives and a Snapshot of Data* (Women's Health Grampians, 2012) 6. See also 16, 20, 22, 27- 48.

<sup>37</sup> Victoria Police, *Family Incident Reports*, above n 23, part 1.

outside of metropolitan areas have been statistically underrepresented.<sup>38</sup> Finally, as the researchers discuss later in this report, and as inTouch Multicultural Centre Against Family Violence (formerly the Immigrant Women’s Domestic Violence Service) has observed, ‘the *risk* of domestic violence to women living in rural areas is believed to be higher than for women living in urban areas’.<sup>39</sup>

### ***Harms, impacts and costs of family violence***

As noted above, we should recognise that increases in the number of reports of and responses to family violence do not, in and of themselves, translate into a higher incidence of family violence. However, we can by no means ignore the reality that family violence is an extremely serious issue that affects many Victorians. Male intimate partner violence is in fact the leading cause of illness, disability and death for Victorian women aged 15 to 44 years.<sup>40</sup> Furthermore, in addition to the fatal consequences of family violence, there are long-term repercussions of and trauma associated with family violence.<sup>41</sup> Survivors of family violence can experience the lasting effects of physical injuries, as well as emotional and psychological tolls, which impact their lives in a myriad of ways. Survivors may suffer from conditions that affect their social engagement (such as long-term stress, post-traumatic stress disorder, anxiety and depression) and be more likely to engage in self-harming behaviours or alcohol and substance abuse, and to commit suicide, than women who have not experienced family violence.<sup>42</sup>

Survivors in this study spoke of the effect of family violence on their health, wellbeing and sense of security. Tina, for instance, had developed post-traumatic shock. Samantha developed numerous ailments as a result of physical violence – including joint pain and hearing loss – as well as stress-related blood clots which she attributed to the abuse she suffered. Other survivors outlined their precarious financial position and housing status after escaping their abuser and

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<sup>38</sup> Hogg and Carrington, *Policing the Rural Crisis*, above n 19, part 2, 147-161. See also Hogg and Carrington, ‘Violence, Spatiality and *Other* Rurals,’ above n 32, part 2, 304, 309-10.

<sup>39</sup> Immigrant Women’s Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 2. See also Australian Bureau of Statistics, *Crime and Safety Australia 2002*, Catalogue No, 4509.0 (Australian Bureau of Statistics, 2003).

<sup>40</sup> VicHealth, *The Health Cost of Violence*, above n 20, part 1, 10.

<sup>41</sup> Evans, *Battle Scars*, above n 21, part 1, 13-15; VicHealth, *The Health Cost of Violence*, above n 20, part 1, 20.

<sup>42</sup> Evans, *Battle Scars*, above n 21, part 1, 4, 13-17; Morgan and Chadwick, ‘Key Issues In Domestic Violence,’ above n 28, part 1, 3, 7-8; VicHealth, *The Health Cost of Violence*, above n 20, part 1, 11-12, 20-27; T Vos et al, ‘Measuring the Impact of Intimate Partner Violence on the Health of Women in Victoria, Australia’ (2008) 84:9 *Bulletin of the World Health Organization* 739-44.

formally responding to family violence.<sup>43</sup> Survivors also described how having to continue associating with their abuser – not only through family violence matters (such as applications for undertakings, FVIOs and responding to breaches) but also in regards to family law issues and matters pertaining to the dissolution of their relationship and separation of assets – had impacted their lives. Cassie explained:

[f]amily violence isn't just the hurting in the home.... It continues long after these decisions are handed down. It can abuse you through the Social Security appeals, tribunals and through the police process and by not paying child support ... he tries to get his way through violence, through the government departments.<sup>44</sup>

Numerous survivors suggested that perpetrators sometimes engage survivors in legal matters or through dealings with state departments in an attempt to see, distress or further abuse survivors and their children.<sup>45</sup> Tina, for instance, who had experienced various forms of abuse (including financial) recounted how her abuser had boasted of the financial hardships he had inflicted on her through legal fees. It was important to survivors that the longevity and legacy of family abuse be recognised. In this regard, workers agreed that legal and court proceedings could be a 'platform for respondents to continue to be emotionally abusive'.<sup>46</sup>

In an economic sense, survivors of family violence may experience financial abuse and/or the financial impacts of dissolving a relationship. More broadly, there are also economic costs of family violence that can impact the greater community.<sup>47</sup> These include direct and indirect costs associated with pain, suffering and advanced mortality; health services; production and productivity; lost wages; accommodation; damaged property; defaults on loans; criminal justice responses; child protective services; preventative initiatives; support programs; financial support; and victims services.<sup>48</sup> The estimated cost of family violence to the State of Victoria (which does

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<sup>43</sup> On this issue, see also Rochelle Braaf and Isobelle Barrett Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (Australian Domestic and Family Violence Clearinghouse, 2011).

<sup>44</sup> Survivor 28.

<sup>45</sup> On this issue, see also Evans, *Battle Scars*, above n 21, part 1, 19-30, 37.

<sup>46</sup> Advocates 32.

<sup>47</sup> The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 18, part 1, see especially 20-62; VicHealth, *Two Steps Forward, One Step Back: Community Attitudes to Violence Against Women* (Victorian Health Promotion Foundation, 2006) 14.

<sup>48</sup> Evans, *Battle Scars*, above n 21, part 1, 24-29; Morgan and Chadwick, 'Key Issues In Domestic Violence,' above n 28, part 1, 3; VicHealth, *The Health Cost of Violence*, above n 20, part 1, 23, 25.

not include losses to women experiencing violence) is approximately 3.4 billion dollars per year.<sup>49</sup> Nationally, the economic cost of family violence to survivors, perpetrators, their networks of family and friends, communities, the private sector and the government has been, perhaps conservatively, estimated to be in excess of 8 billion dollars per year.<sup>50</sup>

As Victorian researchers and agencies have demonstrated, family violence can affect women's mothering and the mother-child relationship.<sup>51</sup> Additionally, family violence can have a 'highly detrimental impact on the developing child'.<sup>52</sup> Infants, children and adolescents who experience family violence can suffer devastating effects, including 'serious negative psychological, emotional, social and developmental impacts to their well-being'<sup>53</sup> as well as the erosion of their sense of safety.<sup>54</sup> Survivors in this study spoke about the many ways that family violence had affected their children.<sup>55</sup> Angela, for instance, described how her child had 'talked about suicide', 'developed an eating disorder' and 'has now got a sleep disorder ... nightmares ... where I'm lying in a pool of blood ... and my ex-partner is standing over me'.<sup>56</sup> Sadly, her story was not unique; two other survivors spoke of their children having nightmares about their mother's abuse and contemplating suicide. Research indicates that, in later life, children who have experienced family violence can experience difficulties in social situations, schooling and employment as well as an

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<sup>49</sup> Office of Women's Policy, *A Right to Respect*, above n 29, part 1, 9-11; State Government of Victoria, *Victoria's Action Plan to Address Violence against Women and Children 2012-2015*, above n 29, part 1, 2, 27-29.

<sup>50</sup> Laing, *Australian Studies of the Economic Cost of Domestic Violence*, above n 30, part 1; Laing and Bobic, *Economic Costs of Domestic Violence*, above n 30, part 1, 18-33; Morgan and Chadwick, 'Key Issues In Domestic Violence', above n 28, part 1, 3. The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 19, part 1, 4.

<sup>51</sup> DVRCV, *Bad Mothers and Invisible Fathers: Parenting in the Context of Domestic Violence* (DVRCV, Victoria 2009); Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 24, 31.

<sup>52</sup> Robyn Miller, *Cumulative Harm: A Conceptual Overview* (Department of Human Services, 2007) 30.

<sup>53</sup> Australian Domestic and Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review* (Australian Domestic and Family Violence Clearinghouse, 2011) 1.

<sup>54</sup> Michael Flood and Lara Fergus, *An Assault on Our Future: The Impact of Violence on Young People and Their Relationships* (White Ribbon Foundation, 2008) 12-13; Jordan and Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong*, above n 1, part 1, 6; UNICEF, *Behind Closed Doors: The Impact of Domestic Violence on Children* (UNICEF, 2006).

<sup>55</sup> As the Australian Domestic and Family Violence Clearinghouse has noted in *The Impact of Domestic Violence on Children*, a series of terms have been used to capture children's experiences of family violence, including 'exposed to violence; experiencing direct abuse; hearing or seeing violence; and living with domestic violence', above n 53, part 2, 2, emphasis in original. **In the present study, the researchers have used the term 'experiencing' family violence, because whether children were indirectly or directly exposed to violence, survivors have noted the serious impact on their health and wellbeing.** Flood and Fergus note that '[c]hildren's experiences of witnessing domestic violence and of being subjected to violence themselves overlap, and there may be little difference between these'; Flood and Fergus, *An Assault on Our Future*, above n 54, part 2, 8.

<sup>56</sup> Survivor 6.

increased risk of alcohol and drug abuse and delinquency.<sup>57</sup> On a further impact, academic research as well as the practitioners consulted for this study have made mention of the possibility of intergenerational transference of abusive behaviours, whereby children who have experienced family violence later perpetrate violence.<sup>58</sup> One worker explained that '[s]ome perpetrators were once victims', and stressed that:

[t]hey are still victims, and deserve help and justice for that. In fact, a well-functioning justice system that addresses children survivors will prevent a proportion of adult perpetration.<sup>59</sup>

A final significant impact of family violence is that it is the most common factor contributing to homelessness among women and children.<sup>60</sup> The most recent available data on specialist homelessness service assistance (people seeking emergency, material aid, long-term and medium-term housing) indicates that, for family groups (children and adult clients), the most common reason for seeking assistance is 'domestic and family violence'.<sup>61</sup> For young people (who also experience significant rates of homelessness) domestic or family violence is the second most common reason for seeking assistance.<sup>62</sup> State and territory comparisons have indicated that Victoria has the greatest numbers of clients escaping domestic and family violence.<sup>63</sup>

As previously identified by CRRLJ researchers, '[n]otwithstanding the high levels of family violence across the community as a whole', the 'extent' and social and economic costs of violence in ATSI communities is higher, with 'Indigenous [ATSI] women' – and we would add children – 'being particularly vulnerable'.<sup>64</sup> Additionally, as support workers have noted, 'in Aboriginal

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<sup>57</sup> Australian Domestic and Family Violence Clearinghouse, *The Impact of Domestic Violence on Children*, above n 53, part 2, 4-5; Kerry Carrington and Janet Phillips, 'Domestic Violence in Australia: An Overview of the Issues,' *E-Brief* (Parliament of Australia, updated 2006); Evans, *Battle Scars*, above n 21, part 1, 36; Flood and Fergus, *An Assault on Our Future*, above n 54, part 2, 11; Morgan and Hannah Chadwick, 'Key Issues In Domestic Violence,' above n 28, part 1, 7-8.

<sup>58</sup> For a discussion of this (and percentages and likelihood of children becoming victims or perpetrators in adult relationships) see: Australian Domestic and Family Violence Clearinghouse, *The Impact of Domestic Violence on Children*, above n 53, part 2, 5; Evans, *Battle Scars*, above n 21, part 1, 36; David Indermaur, 'Young Australians and Domestic Violence' (2001) 195 *Trends and Issues in Crime and Criminal Justice* 1-6, 4-6; Lesley Laing, 'Children, Young People and Domestic Violence,' (2000) 2 *Australian Domestic and Family Violence Clearinghouse Issues Paper*, 1-28, 5.

<sup>59</sup> Advocate response to draft key findings and recommendations.

<sup>60</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-2013*, above n 21, part 1, 78-83; Evans, *Battle Scars*, above n 21, part 1, 28; Homelessness Taskforce, *The Road Home*, above n 21, part 1, 5, 7; Tually et al., above n 21, part 1, 1.

<sup>61</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012-2013*, above n 21, part 1, 67.

<sup>62</sup> *Ibid*, 69, 71.

<sup>63</sup> While this is the highest number nationally, this occurs at the second highest rate, nationwide. *Ibid*, 80.

<sup>64</sup> Indigenous women's victimisation may be 40 per cent higher than non-Indigenous women. Jordan and Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong*,

communities ties are so strong that it can be much harder to escape family violence than in other communities'.<sup>65</sup> Other community groups (who we note might identify as or be categorised using one or more of the following terms, but nonetheless incorporate women with diverse needs, perspectives and experiences) disproportionately affected by family violence include young women,<sup>66</sup> pregnant women,<sup>67</sup> rural women<sup>68</sup> and women living with a physical or intellectual disability.<sup>69</sup> There is no consensus as to whether refugee and CALD women in Australia experience family violence at higher rates. In fact data is not available as to the rate at which CALD women experience family violence.<sup>70</sup> However, what is key to observe is that this is not a homogenous category, and regardless of the rate of family violence in CALD communities, CALD women face additional barriers and have diverse needs, but often have more limited access to appropriate services, particularly in regional and rural areas.<sup>71</sup> Although the focus of this report is on women survivors specifically, and on regional and rural Victoria more broadly, women from the aforementioned community groups and workers who support these women have been interviewed.

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above n 1, part 1, 6. See also: Aboriginal Family Violence Prevention and Legal Service, *Strengthening Law and Justice Outcomes for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault and Women and Children: National Policy Issues – A Victorian Perspective (Paper 1)* (FVPLS, 2010) 7-9; Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family Violence among Aboriginal and Torres Strait Islander Peoples* (Australian Institute of Health and Welfare, 2006) 2-3, 27-51; Colleen Bryant for the Indigenous Justice Clearinghouse, 'Identifying the Risks for Indigenous Violent Victimization,' (2009) 6 *Indigenous Justice Clearinghouse Briefs* 1-5; Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 132-6; Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001) 157-165; The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 19, part 1, 70; Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities,' (2011) 405 *Trends and Issues in Crime and Criminal Justice*, 1-11, see 1.

<sup>65</sup> Advocates 28.

<sup>66</sup> Carrington and Phillips, 'Domestic Violence in Australia', above n 57, part 2; VicHealth, *Preventing Violence against Women in Australia* (Victorian Health Promotion Foundation, 2011) 4.

<sup>67</sup> Carrington and Phillips, 'Domestic Violence in Australia', above n 57, part 2.

<sup>68</sup> Carrington and Phillips, 'Domestic Violence in Australia', above n 57, part 2; The National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children*, above n 19, part 1, 70; WESNET *Domestic Violence in Regional Australia*, above n 23, part 1, 3-13.

<sup>69</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 1; Sharon Milberger et al, 'Violence Against Women with Physical Disabilities' (2003) 18:5 *Violence and Victims* 581-91; The National Council to Reduce Violence against Women and their Children, *The Cost of Violence and their Children*, above n 18, part 1, 70.

<sup>70</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 3.

<sup>71</sup> *Ibid*, 2-3. See also: Morgan and Chadwick, 'Key Issues In Domestic Violence', above n 28, part 1, 5; WESNET, *Domestic Violence in Regional Australia*, above n 23, part 1, 9.

## ***What is family violence?***

*I was one of the children. I am spoken to like I'm one of the children because he has so much power, control over everything. There's a lot more to it than just being hit and verbally abused.<sup>72</sup>*

*There needs to be more education with the people in the law courts because even myself, I thought domestic violence was just the things you just prove and not the emotional, spiritual, and psychological stuff.<sup>73</sup>*

*There is a misunderstanding about the nature of family violence.<sup>74</sup>*

The Family Violence Protection Act outlines the various forms that family violence may take: behaviour that is 'physically or sexually abusive', 'emotionally or psychologically abusive', 'economically abusive', 'threatening', 'coercive' or which 'in any other way controls or dominates the family member', resulting in fear for their safety or wellbeing or that of another family member.<sup>75</sup> Finally, the Act identifies behaviour that results in a child hearing, witnessing or being exposed to the effects of the aforementioned behaviour as family violence.<sup>76</sup>

However, while the legal definition of family violence is clearly much broader than physical violence, workers expressed concern that 'the change to the law that family violence is not just physical has not permeated through'.<sup>77</sup> Many survivors spoke of feeling as though the non-physical abuse they experienced did not constitute family violence. 'I really didn't know what the violence was', Helen, commented, 'I always thought domestic violence was sexual or physical'.<sup>78</sup> Non-physical forms of abuse did, however, dramatically impact their lives. Helen was subjected to psychological abuse whereby her partner would 'do things, [but] he would say he didn't and that I must have had a blackout, I'd forgotten things'. She began to doubt her own mental health; '[o]ver time', she explained, 'I started to believe I'd had blackouts, I'd forgotten things. He was very convincing and he was talking reasonably'.<sup>79</sup>

Survivors described feeling as though it was 'hard to explain, let alone have evidence for' some of the forms of abuse that they experienced.<sup>80</sup> '[W]hen you've got the physical side, people look at

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<sup>72</sup> Survivor 11.

<sup>73</sup> Survivor 4.

<sup>74</sup> Advocates 25 and 32.

<sup>75</sup> Family Violence Protection Act 2008 (Vic) See sections 4-7.

<sup>76</sup> Ibid.

<sup>77</sup> Advocates 32.

<sup>78</sup> Survivor 4.

<sup>79</sup> Ibid.

<sup>80</sup> Survivor 8.

you differently to when you've got emotional scarring', one survivor explained, 'emotional abuse is no better or worse than the other [kinds of abuse]' but she suggested that 'in the court system it's not recognised at all'.<sup>81</sup> Workers likewise expressed concern that non-physical abuse (in particular emotional abuse) was 'the hardest to explain in court' and spoke of the difficulties involved in proving that patterns of non-physical abuse might persist if this form of abuse was not seriously regarded by the courts and the respondent.<sup>82</sup> While support service workers were regarded as having an understanding and appreciation of the various forms of family violence, some survivors felt that their legal advocates did not. Ingrid, for example, recalled being pressured by her lawyer to discuss the harms and impacts of the non-physical forms of abuse she had suffered – such as psychological and financial abuse – in physical terms. The consequence of such responses was, for some survivors, a failure by the system to recognise the impacts of family violence on their lives and a failure of justice.

Survivors frequently experienced numerous forms of family violence. In addition, survivors with disabilities reported experiencing other forms of violence, including neglect or maltreatment by family members who provided them with disability support. Women with disabilities who experience family violence face additional barriers including but not limited to dependency on those who provide support, limited private finances, limited access to suitable transport, social isolation and limited support services that are responsive to their needs.<sup>83</sup> As will be discussed in the following pages, these barriers are compounded in a rural setting.

### ***Normalisation of violence***

*[I experienced family violence for] most of my life. As a child I was a direct victim of family violence and a witness. In all my adult relationships there has been family violence.... That was the way I grew up. It was normal to have family violence and as much as you want to end it, it is all you know.*<sup>84</sup>

*For about a third of the women I see the violence is normalised.*<sup>85</sup>

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<sup>81</sup> Survivor 2.

<sup>82</sup> Advocate 29; Advocate 24 made similar comments.

<sup>83</sup> For more on this see Lucy Healey et al., *Building the Evidence: A Report on the Status of Policy and Practice in Responding to Violence Against Women with Disabilities in Victoria* (Victorian Women with Disabilities Network Advocacy Information Service, 2008).

<sup>84</sup> Survivor 21.

<sup>85</sup> Advocate 27.

Most survivors interviewed had experienced a lifetime of family violence – abuse as children and later, as adults, in interpersonal relationships, or in numerous interpersonal relationships for most of their adult life. In the contexts of their lives, violence in its various forms – physical, sexual, emotional, psychological and financial – and threatening or coercive behaviours were often normalised and sometimes expected. ‘My whole life has been domestic violence. I thought that’s what happened in families’, Bella commented, ‘I kept it hidden because I thought everybody was experiencing it’.<sup>86</sup> A perception that family violence is normal resulted in some survivors feeling as though the abuse they experienced was warranted. ‘I thought it was my fault’, Yvonne recalled, ‘[v]iolence seemed to follow me around. I deserved it because it happened all the time’.<sup>87</sup> Kelly echoed Yvonne’s statement, commenting, ‘[a]fter a while ... you’ve gotta work out if you deserve it’.<sup>88</sup> Normalisation of violence could lead to a reluctance to seek support because, as Keri explained, ‘[w]here do you go? ... you are used to it’.<sup>89</sup>

### ***Intergenerational ‘cycles’ of violence***

Considering their lifetime or long-term experiences of violence, many survivors spoke about coming to the realisation that they had been caught in a cycle of violence, experiencing violence both as children and later in their own adult relationships. ‘I grew up with it’, Macy noted, ‘I didn’t think I was repeating it but then I realised I was’.<sup>90</sup> Some survivors said that their children also experienced violence in their own relationships. Describing the violent relationships in which her daughter had been involved as an adult, Bella lamented that ‘my daughter didn’t escape’.<sup>91</sup> There were survivors who also spoke of their sons becoming abusive towards them when they (the sons) were older; and on this issue, as noted earlier, workers stressed the importance of acknowledging that some perpetrators were once survivors of family violence.

Key to preventing intergenerational violence and abusive behaviour more generally is, many survivors suggested, engagement with and education of children around the issues of respect and family violence and the concepts of gender and healthy relationships. Women also advocated for creating spaces in schools where children could talk about abuse and its impacts; ‘educat[i]on in the school setting, so there’s a sense of sanctuary from responsible adults if those people at home

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<sup>86</sup> Survivor 18.

<sup>87</sup> Survivor 27.

<sup>88</sup> Survivor 20.

<sup>89</sup> Survivor 17.

<sup>90</sup> Survivor 10.

<sup>91</sup> Survivor 18.

aren't engaging in those [responsible] behaviours'.<sup>92</sup> 'There has to be a place to talk about violence in schools', Keri explained, '[b]ecause these kids are living it like I lived it'.<sup>93</sup> She discussed creating a space, sanctuary – 'a safe place in the school, a room somewhere where kids can talk to each other'.<sup>94</sup>

### ***Survivors and social change***

*'There is the issue of community attitudes to family violence, like 'she could have left if she wanted to'.<sup>95</sup>*

Survivors saw a direct correlation between constructs of gender, the subjugation of women and the perpetration and normalisation of violence against women. Consequently many women insisted that change needs to be effected throughout the broader community. Bee, for instance, was emphatic that '[p]eople [throughout the community] have got to realise [that] they can't do it [perpetrate or accept violence against women]'.<sup>96</sup> She saw a connection between women feeling unsafe in private and public places and insisted that 'women should be able to walk around the streets, and we should be able to be safe in our own homes'.<sup>97</sup> Macy agreed that widespread and extensive reform is necessary in asserting that she 'need[ed] society to really address this issue and help me'.<sup>98</sup>

Survivors advocated for greater and more open discussion of family violence and of the assistance available to women. Samantha, for instance, believed that:

it [information] has got to be splashed in newspapers, continually, free newspapers ... it's got to be there so every woman knows where to go for help.<sup>99</sup>

'[E]ducation at every spectrum of the community' was regarded as vital to promoting healthy relationships, challenging acts and acceptance of abuse, and debunking the myth that non-physical abuse is not 'really' family violence.<sup>100</sup> In particular, education around what constitutes financial, emotional and psychological abuse and associated harms was identified as necessary.

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<sup>92</sup> Survivor 10

<sup>93</sup> Survivor 17.

<sup>94</sup> Ibid.

<sup>95</sup> Advocate 24.

<sup>96</sup> Survivor 9.

<sup>97</sup> Ibid.

<sup>98</sup> Survivor 10.

<sup>99</sup> Survivor 11.

<sup>100</sup> Survivor 10 and also 26.

Many women expressed a determination to speak out against violence and campaign for reform. Yvonne, for instance, was 'on a mission to be able to speak so that people can come out against family violence'. She 'want[ed] to run classes for women on TV [sic]'. 'There are alternative ways to deal with what is being done to you', she asserted, 'and ways that you can use that energy to move forward'.<sup>101</sup> Survivors also reported experiencing harassment when they ended their relationships and entered new relationships after leaving their abuser, affirming the need for societal campaigns that emphasise that women have the right to form and leave relationships.

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<sup>101</sup> Survivor 27.

## Part 3: Family violence in regional and rural Victoria

*If domestic violence has generally been difficult to fully document because it occurs in private then this is even more of a problem in many parts of rural and regional Australia where privacy is compounded by geographic isolation from police and health services and other formal and informal networks.<sup>1</sup>*

*The barriers for rural women are exacerbated issues that regional women face.<sup>2</sup>*

Writing on the 'the importance of place' in examining the nature, impact and responses to violence, Gallup-Black notes:

[t]here are several differences between urban and rural areas with respect to geography, community dynamics, crime control strategies, and family and intimate partner abuse patterns that underpin rural-urban variations in the kinds of family and intimate partner violence that can lead to murder. The geography of rural areas facilitates the isolation that accompanies and supports rural family violence.<sup>3</sup>

Laws, legal processes, policies and resource allocations typically reflect the circumstances associated with a metropolitan rather than a regional or rural environment. Those who live outside metropolitan Victoria are disadvantaged by the limited range of resources, services and programs available. Indeed, until recently, most responses (certainly most state responses) to family violence focused on metropolitan and, to a lesser extent, regional Australia.<sup>4</sup> The roll-out of specialist family violence courts in Victoria has, for instance, included only regional court, in Ballarat. In academic discourse, scant literature has been produced on the geographical variances within the criminal justice system, in particular, differences between metropolitan locations and regional, rural and remote locations.

In her 2009 study, Wendt 'identified that rural community factors impact on rural women' who experience violence, which renders survivors 'particularly vulnerable and therefore contribute[s] to the continuation' of violence.<sup>5</sup> Certainly rural communities are not homogenous, but aside

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<sup>1</sup> Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 148.

<sup>2</sup> Advocate 27.

<sup>3</sup> Note: Gallup-Black writes in an American context. Adria Gallup-Black, 'Twenty Years of Rural and Urban Trends in Family and Intimidate Partner Homicide: Does Place Matter?' (2005) 9:2 *Homicide Studies* 149-73, see 151.

<sup>4</sup> Margaret Alston, 'Violence against Women in a Rural Context,' (1997) 50:1 *Australian Social Work* 15-22, see 15; Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 191; Hogg and Carrington, 'Violence, Spatiality and *Other* Rurals,' above n 32, part 2, 302; Wendt, 'Building and Sustaining Local Co-ordination,' above n 24, part 1, 45.

<sup>5</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 28.

from definitional issues with the terms 'rural'<sup>6</sup> and 'rural community'<sup>7</sup>, these areas 'differ from each other in geography, economics, demographics, and culture'.<sup>8</sup> Nonetheless, this study found that while many of the issues facing women who live in rural communities (and indeed smaller regional communities) and experience family violence are similar to the issues metropolitan women face, these issues are likely to be compounded because of where women live. In this section, the barriers to seeking assistance and justice in rural and regional settings that were identified by survivors and workers are presented.

## ***Barriers facing survivors in regional and rural Victoria***

### **Geographic isolation**

Physical distance in rural communities can hinder the ability of survivors to seek assistance and escape violence.<sup>9</sup> In 1992 the National Committee on Violence against Women noted that 'isolation on properties posed a major problem in getting help when needed'.<sup>10</sup> Survivors interviewed in their study spoke of the silence and seeming invisibility associated with their geographic isolation; 'the comments of one woman, "no one can hear your screams", were echoed by a number of women', with unscheduled visitors or contacts rare in more remote regions.<sup>11</sup> In the current research, survivors described significant distances between their residences and police stations, support networks, healthcare professionals and services. On the dangerous and deadly consequences of distance, Gallup-Black asserts that:

many homicides in rural communities were actually assaults that became murders because adequate and immediate medical care was not available.<sup>12</sup>

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<sup>6</sup> John Scott et al., 'Introduction', in Elaine Barclay, Joseph Donnermeyer, John Scott and Russell Hogg (eds), *Crime in Rural Australia* (Federation Press, 2007) 1-14, 3;

<sup>7</sup> Elaine Barclay and Joseph Donnermeyer, 'Community and Crime in Rural Australia,' in *ibid*, 44-54.

<sup>8</sup> Ralph A. Weisheit, David N. Falcone and L. Edward Wells, *Crime and Policing in Rural and Small-town America* (Waveland Press Inc., 3<sup>rd</sup> ed, 2006) 21.

<sup>9</sup> See also: Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 30; WESNET, *Domestic Violence in Regional Australia: A Literature Review*, above n 23, part 1, 16.

<sup>10</sup> National Committee on Violence Against Women (ed), *Discussion and Resource Kit for Use in Rural and Isolated Communities*, (National Committee on Violence Against Women, 1992) 7. See also: Christine Nolan, 'Domestic Violence in Country Areas in Australia' in *ibid*, 22-23.

<sup>11</sup> *Ibid*.

<sup>12</sup> Again, the author does write in the American context. Gallup-Black, 'Twenty Years of Rural and Urban Trends in Family and Intimidate Partner Homicide,' above n 3, part 3, 152.

Those who lived on farms spoke about how continued close proximity to their abusers, who lived and worked on site, placed the women under constant surveillance – constantly visible to and monitored by their abusers, and often far from others.<sup>13</sup>

In many rural areas, public transport networks are limited and fragmented at best, non-existent at worst. As Alston, writing in 1997 noted,

[a]ccessing crisis accommodation when no refuge is available and public transport is non-existent is a major issue in rural communities.<sup>14</sup>

Private transport (which refers to either survivor's cars, hire cars or the use of taxi services), where accessible, is often extremely expensive.<sup>15</sup> Numerous survivors in this study reported that their abuser had controlled their access to their own vehicles and, given the few (if any) viable alternative transport options, survivors had limited opportunities to move freely, seek assistance or escape violence. Workers and survivors alike agreed that limited transport options can place women with disabilities in an even more precarious position. One worker recounted the case of a disabled survivor whose husband took her car and, in so doing, robbed her of her ability to leave the farm. A survivor whose disabilities prevented her from driving described how she was reliant on her partner to travel anywhere, and so '[t]o a certain extent, it [had] given him control' over her movements, and her life.<sup>16</sup>

### **Social isolation**

Stereotypes of small, close-knit rural communities persist<sup>17</sup>; however, some survivors described feeling disconnected from their community, particularly if they did not have support networks in the area or resided in communities they regarded as 'conservative'. The notion of conservatism in these accounts seemed to be linked to constructs of tradition, gender and patriarchy, and

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<sup>13</sup> On this see also: Dale Bagshaw et al., *Reshaping Responses to Domestic Violence: Final Report* (University of South Australia, 2000) 24.

<sup>14</sup> Alston, 'Violence against Women in a Rural Context,' above n 4, part 3, 19.

<sup>15</sup> See also: Lyla Coorey, *Domestic Violence and the Police. Who is Being Protected? A Rural Australian View* (MA, University of Sydney, 1988), 108-109, 12; Lyla Coorey, 'A Rural Perspective on Domestic Violence', in *Discussion and Resource Kit for Use in Rural and Isolated Communities*, (for edited collection reference see above n 152) 26-28.

<sup>16</sup> Survivor 8.

<sup>17</sup> Cath Hastings and Karen MacLean, 'Addressing Violence against Women in a Rural Context' (Paper presented at Expanding Our Horizons Conference, Sydney, 18-22 February 2002) 1-12, see 1; Hogg and Carrington, 'Violence, Spatiality and *Other* Rurals,' above n 32, part 2, 293, 296. While, at the same time notions of community are espoused, 'others' (such as ATSI and, we would contend CALD peoples) have been '[o]ften excluded from, or only conditionally included in...ideal[s] of the rural collectivity' (see 299).

unequal power relations that position women as dependants.<sup>18</sup> In this study, Tina spoke of the ways her abuser framed his controlling behaviour – restricting both her access to their finances and her association with others – as ‘taking care’ of her in an ‘old fashioned’ manner. On the farm she was encouraged to assume responsibility for the domestic sphere and to have no involvement in the operations and management of the business, which were regarded as male domains by her abuser.<sup>19</sup>

As Carrington and Hogg have noted, traditional gender constructs are not only found in rural Australian communities. However, in rural communities, they assume unique – but not unified or monolithic – features and meanings. ‘The social organisation of masculinity’ in rural areas is, they argue, ‘constructed more narrowly around heteronormative concepts of masculinity that subordinates others through practices of domination that historically have relied on the exercise of violence’.<sup>20</sup> Wendt, as a result of interviews with human service workers about domestic violence in rural Australia, has similarly noted that the concepts of tradition and patriarchy can serve to normalise abusive behaviour so that ‘it became acceptable in relationships where women tolerated it and men justified it as part of their masculine role in the family’, which ‘contributed to the lack of naming and identifying of abuse’.<sup>21</sup> Additionally, ‘[f]raternalities based on old school ties, kinship, farming and other associations’ can operate to exclude women from ‘participation in local power structures’.<sup>22</sup> Of course this is not to say that women in rural areas are constantly excluded, oppressed or exposed to violence.<sup>23</sup>

However, in settings where the subjugation of women is to some extent accepted or normalised, women may be reluctant to (or, as we discuss later in regards to police responses, seemingly discouraged from) formally respond to family violence.<sup>24</sup> Furthermore, in areas where generational family property, farms and businesses feature, lineage and reputation are often highly valued and can serve to discourage women from seeking assistance because responses to

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<sup>18</sup> On this issue see also: Barclay and Donnermeyer, ‘Community and Crime in Rural Australia,’ above n 7, part 3, 50; Coorey, *Domestic Violence and the Police*, above n 15, part 3, 115-17, 124; Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 144-50; WESNET, *Domestic Violence in Regional Australia: A Literature Review*, above n 23, part 1, 15.

<sup>19</sup> Survivor 22. See also Carrington and Scott, ‘Masculinity, Rurality and Violence,’ above n 31, part 2, 651; Hogg and Carrington, ‘Violence, Spatiality and *Other* Rurals,’ above n 32, part 2, 298, 311-2.

<sup>20</sup> Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 180. See also Carrington and Scott, ‘Masculinity, Rurality and Violence,’ above n 31, part 2, 651-2.

<sup>21</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 147.

<sup>22</sup> Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 167.

<sup>23</sup> Carrington and Scott, ‘Masculinity, Rurality and Violence,’ above n 31, part 2, 655-6.

<sup>24</sup> See also Coorey, *Domestic Violence and the Police*, above n 15, part 3, 115-21.

family violence are thought to disrupt images of the harmonious family or family business.<sup>25</sup> On this issue workers suggested that in some rural areas ‘community attitudes are a big problem’ insofar as ‘parents, friends and family’ tend to advise and pressure women to ‘keep the family together’.<sup>26</sup> ATSI survivors and support workers also talked about the pressure from, and the notion of loyalty to, familial and community structures, which served as disincentives to the disclosure of abuse. As workers explained, an abuser’s networks could be confronting because ‘[w]ith Indigenous communities you’re not just up against one person, you’re against the whole family’.<sup>27</sup> Referring to this context of violence, whereby a number of people attack or undermine an individual, ‘lateral violence’ (as it is known) impacts women’s experiences of violence as well as the advocacy and assistance available to them, because of conflict of interest issues.<sup>28</sup> As workers explained:

[t]he issue of lateral violence is a real problem for us, because it means that women can’t access services that they should be able to because of family connections. We often have to send women right away to get them proper services.<sup>29</sup>

In addition to the ‘mental isolation’<sup>30</sup> that some survivors experience, international studies have suggested that in some rural communities, as a result of the importance of certain values such as cooperation and self-sufficiency, there is a ‘tendency of residents ... to keep community problems to themselves’.<sup>31</sup> Australian studies have found that the social architecture of rural life:

tends to render them [community structures] less receptive to forms of social intervention that might threaten projected images of self-reliance, family respectability and responsibility and stoicism in the face of adversity.... These values and attitudes can operate as informal inhibitions on seeking outside help and exposing private troubles to public scrutiny and potential shame and embarrassment.<sup>32</sup>

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<sup>25</sup> See also Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 124; Coorey, ‘A Rural Perspective on Domestic Violence’, above n 15, part 3, 28.

<sup>26</sup> Advocate 33.

<sup>27</sup> Advocate 28.

<sup>28</sup> See glossary, 188-9.

<sup>29</sup> Ibid.

<sup>30</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 30; Hogg and Carrington, ‘Violence, Spatiality and *Other Rurals*,’ above n 32, part 2, 312.

<sup>31</sup> Weisheit, Falcone and Wells, *Crime and Policing in Rural and Small-town America*, above n 8, part 3, 47. See also Hogg and Carrington, ‘Violence, Spatiality and *Other Rurals*,’ above n 32, part 2, 311.

<sup>32</sup> Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 188.

In this sense, the close-knit nature of a rural community can serve to isolate women. In the present study, women talked about this phenomenon in terms of their visibility.

### **Visibility**

Survivors in smaller regional and rural communities expressed fear and anxiety that they were more visible to their abuser and their community than survivors in metropolitan regions. As a consequence, many women were concerned that if they were to leave their abuser, he would be able to find them, and if they were to seek assistance, their abuse would be publicly known. On the issue of women being located by their abusers, Kalia remarked, 'it is easy to find women in the country', particularly when children are involved; '[y]ou just go to all the schools and wait and eventually you will find the one the kids are at'.<sup>33</sup> Some survivors worried about the impact on their visibility and safety of living a significant distance from the closest police station, which in a number of regional and rural locations was not operational twenty-four hours a day. Discussing safety, distance and visibility, workers claimed that because circuit court magistrates are not always familiar with the areas they visit, no contact orders might be less restrictive than necessary:

a magistrate might think there's only one supermarket in town that people can go to ... so will make an order that people only need to be five metres away from each other when in fact it would work if the order was that they had to be 200 metres or 600 metres from each other.<sup>34</sup>

In places where women and their abusers were more likely to be known to support workers, police, court workers and medical professionals, ensuring privacy and confidentiality was tenuous at best, which could lead to a reluctance on the part of survivors to disclose or formally respond to family violence.<sup>35</sup> Keri, for instance, a well-known and respected member of her ATSI community, spoke of not 'want[ing] to be a failure to the world', which she felt would be the case were she to report her abuser, and discussed her fear that 'everyone would know' about her abuse.<sup>36</sup> Likewise, Teresa felt that where she lived '[e]veryone knows everyone's business'. Her abuser was 'well known' and in such an environment she was not comfortable reporting her abuse

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<sup>33</sup> Survivor 15.

<sup>34</sup> Advocate 28.

<sup>35</sup> Carrington and Hogg, *Policing the Rural Crisis*, above n 19, part 2, 158; Coorey, *Domestic Violence and the Police*, above n 15, part 3, 90; Bridget Harris, Lucinda Jordan and Lydia Phillips, 'Courting Justice Beyond the Cityscape: Access to Justice and the Rural, Regional and Remote Magistrates' Court,' (2014) 23:3 *Journal of Judicial Administration* 1-13, 7-8, 11.

<sup>36</sup> Survivor 17.

or seeking assistance. She explained that 'to go to hospital and say what was happening.... It was too hard'.<sup>37</sup> In 'small towns with high levels of mutual recognition', Hogg and Carrington explain, 'embarrassment acts as a major deterrent to seeking outside assistance'.<sup>38</sup> As explored further in the sections relating to Victoria Police, magistrates' courts and health services, survivors and workers placed great emphasis on the need for private places in which they could discuss their abuse, both at the police station and the courts, and where impartiality and confidentiality could be assured.

### **CALD survivors: visible and invisible**

The diverse, unique and particular needs and identities of CALD women and indeed of CALD communities are not always recognised, particularly in (predominantly Anglo-Australian) regional and rural places.<sup>39</sup> However, as inTouch explain:

[t]hough in one sense they are invisible, immigrant and refugee women are also exceptionally visible ... because of their different looks and practices.<sup>40</sup>

And ultimately, 'rural immigrant and refugee women face even more barriers than other women'.<sup>41</sup> Like non-CALD women, CALD women in rural areas often have limited knowledge of the available services and supports, including both generalist and specialist services for CALD women who have experienced violence.<sup>42</sup> Additionally, as workers in this study discussed, generalist services do not always accommodate CALD women – for instance, 'when there are just generalist information sessions and CALD women are not included'.<sup>43</sup> In any event, mainstream services and supports as well as culturally appropriate services and supports can be difficult for survivors in regional and rural locations to access because of fragmented public transport and

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<sup>37</sup> Survivor 23.

<sup>38</sup> Hogg and Carrington, 'Violence, Spatiality and *Other* Rurals,' above n 32, part 2, 310. On police perceptions of embarrassment as a deterrent see: Deb Nicholson, 'Only a Domestic...A Rural Perspective on Police Responses to Violence against Women,' (1998) 4 *Women Against Violence* 15-24, 19.

<sup>39</sup> Carrington and Scott note: 'While Australia is a multicultural country... there is a cultural chasm between the country and capital cities...Rural towns tend to be more culturally homogenous than cities' Carrington and Scott, 'Masculinity, Rurality and Violence,' above n 31, part 2, 644.

<sup>40</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 15.

<sup>41</sup> *Ibid*, 2.

<sup>42</sup> Although not rural specific in focus, this issue is discussed in: Women's Legal Resources NSW, *A Long Way to Equal* (Women's Legal Services NSW, 2007) 19-22.

<sup>43</sup> Advocates 34.

expensive private transport.<sup>44</sup> Survivors who have experienced racism might also be reluctant to seek assistance, whether from mainstream services or state agencies.<sup>45</sup> As workers identified, survivors of family violence are more likely to seek information about family violence supports from people in their social network than support services directly, and reportedly ‘this is particularly the case with newly arrived people’; and so even when CALD women can access services they will not necessarily choose to do so directly.<sup>46</sup> One worker told the researchers that CALD women in her area were most likely to disclose their experiences of violence to church officials who would act as confidants, ‘but they do nothing’ – not advising women of their options in responding to family violence or of the available assistance.<sup>47</sup>

Service workers have noted that CALD women might also be reluctant to formally respond to family violence because of ‘fear and mistrust of police’<sup>48</sup> or ‘insecurity in the presence of police’.<sup>49</sup> This is of course particularly true for women who have come from societies in which state agents such as the police have ‘participated in political and cultural persecution’.<sup>50</sup> Factors such as ‘language difficulties and cultural isolation’ can be barriers to women seeking assistance more generally and certainly in relation to contacting and communicating with police.<sup>51</sup> As a worker explained:

[d]ealing with police can be overwhelming because police speak in a very structured way. CALD women can struggle with this. All women struggle with this.<sup>52</sup>

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<sup>44</sup> Immigrant Women’s Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 2, 11, 13, 16. See also: Federation of Ethnic Communities’ Councils of Australia, *Rural and Regional Settlement Issues Paper* (Federation of Ethnic Communities’ Council of Australia, 2012) 15.

<sup>45</sup> Susan Rees and Bob Pease with the Immigrant Women’s Domestic Violence Service, *Refugee Settlement, Safety and Wellbeing: Exploring Domestic and Family Violence in Refugee Communities* (Immigrant Women’s Domestic Violence Service, 2006) 36-7.

<sup>46</sup> Advocates 34.

<sup>47</sup> Advocate 29.

<sup>48</sup> Immigrant Women’s Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 11.

<sup>49</sup> Josie Wakim, ‘Attitudes and Opinions of Police, Service Providers and Community Leaders to Domestic Violence in Culturally Diverse Communities in Sydney, Australia’ (Paper presented at the Third Australasian Women and Policing Conference: Women and Policing Globally, Canberra, 23 October 2002) 1-9, see 6.

<sup>50</sup> See, for instance: Carmen Tommasi and Margaret Camilleri for the Flemington Kensington Community Legal Centre, *Issues Facing the Horn of Africa Communities* (Flemington Kensington Community Legal Centre, 1995) 17; Women’s Legal Resources NSW, *A Long Way to Equal*, above n 42, part 3, 30.

<sup>51</sup> Immigrant Women’s Domestic Violence Service, *Rural Research Report* (Immigrant Women’s Domestic Violence Service, 2006) 11, 21. See also Rees and Pease with the Immigrant Women’s Domestic Violence Service, *Refugee Settlement, Safety and Wellbeing*, above n 45, part 3, 31.

<sup>52</sup> Advocate 35. On issues with access to interpreters see inTouch, *I Lived in Fear Because I Knew Nothing: Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (inTouch, 2010) 20, 21.

Furthermore, workers identified that '[w]omen from refugee backgrounds, particularly where there is a culture of few women's rights', can be reluctant 'to trust in the system', both in regards to both the police and court officers and processes.<sup>53</sup>

Regardless of their desire to escape violence, newly arrived CALD women might be unable to access informal or formal assistance. In some communities that the researchers visited there were women who had come to Australia on marriage visas. These women are seen to be in a particularly vulnerable position because they are often on rural properties, isolated and under intense surveillance. They often 'do not know what is and isn't acceptable in terms of treatment from their partners. And they have no one to ask'.<sup>54</sup> These women are, workers maintained, rarely able to 'go out alone, their partners take them to town, to the supermarket and go into doctor[']s offices] with them'.<sup>55</sup>

CALD women – not only newly arrived CALD women – might not seek assistance from informal or formal supports because they are unaware of their social, legal and financial rights and their immigration status.<sup>56</sup> One worker said that 'many women are actually sex slaves' and 'are very fearful that if they speak out [about the violence they experience] they will be deported'.<sup>57</sup> Compounding the issue, survivors and workers told the researchers of incidents where women 'are threatened [by their abusers] with being sent back to their country' if they were to disclose the violence they experienced; 'their "residency issues" are used to silence and control them'.<sup>58</sup> Women were also told that if they spoke of their abuse or sought assistance, their access to their children would be jeopardised. One worker reported that '[t]he husband of one of my clients told her that she would be imprisoned if he told anyone she was a bad mother'.<sup>59</sup> In other cases abusers sought to legitimise their violence by intentionally misinforming women about women's right not to experience violence.

In this and other studies, service workers discuss the ways in which abusers have sought to 'make escape seem almost impossible' by socially and geographically isolating CALD women, such as by

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<sup>53</sup> Advocate 25.

<sup>54</sup> Advocate 29.

<sup>55</sup> Ibid.

<sup>56</sup> See also Annabelle Allimant and Beata Ostapiej-Piatkowski, 'Supporting Women from CALD Backgrounds Who are Victims / Survivors of Sexual Violence,' (2011) 9 *ACSSA (Australian Centre for the Study of Sexual Assault) Wrap* 1-16, see 2; inTouch, *I Lived in Fear Because I Knew Nothing*, above n 52, part 3, 15-18; Women's Legal Resources NSW, *A Long Way to Equal*, above n 42, part 3, 29.

<sup>57</sup> Advocate 29.

<sup>58</sup> As spoken of by *ibid.*

<sup>59</sup> *Ibid.*

preventing them from learning General Australian English or learning to drive, which can limit their financial and social independence.<sup>60</sup> Social and geographic isolation can be exacerbated by a woman's disconnect from family support, which can prevent her from disclosing violence, as can a disconnect from cultural or community networks which are typically larger in metropolitan areas than in regional and rural locations.<sup>61</sup> Conversely, a woman's cultural or community network may prioritise the family structure and, consequently, actively encourage women to stay with their abusers, and blame or shame women who do not.<sup>62</sup> On this issue, Nesci explains that CALD women might not self-refer to services because:

for many groups where everything happens in terms of family and community, being treated as an individual is a new concept [and] for many communities where the individual looks to the extended family and the community for help when there was a problem, the idea of seeking help from strangers [is] a strange and bewildering concept.<sup>63</sup>

In this vein, the Footscray Legal Service recently found that clients of its African Legal Service were frequently reluctant to report family violence to police because it was regarded as a private matter, to be resolved by extended family members and community elders.<sup>64</sup> One CALD survivor recalled that 'they [our families] said I shamed them by going to police'.<sup>65</sup> She said that in her culture men are commonly regarded as caregivers and heads of their household, so male control of finances was accepted by those in her support network and the financial abuse she experienced was not recognised as such. The researchers heard that it was not uncommon for CALD survivors to leave regional and rural areas and relocate to Melbourne, because their cultural community was bigger there and there were more formal and informal supports.

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<sup>60</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 16. See also: Rees and Pease with the Immigrant Women's Domestic Violence Service, *Refugee Settlement, Safety and Wellbeing*, above n 45, part 3, 33. This was an issue raised by workers in this study.

<sup>61</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 13. See also Federation of Ethnic Communities' Councils of Australia, *Rural and Regional Settlement Issues Paper*, above n 44, part 3, 15; Rees and Pease with the Immigrant Women's Domestic Violence Service, *Refugee Settlement, Safety and Wellbeing*, above n 45, part 3, 29.

<sup>62</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 3, 16, 17. This was an issue raised by workers in this study and in: Federation of Ethnic Communities' Councils of Australia, *Rural and Regional Settlement Issues Paper*, above n 44, part 3, 15; inTouch, *I Lived in Fear Because I Knew Nothing*, above n 52, part 3, 16-17.

<sup>63</sup> Angela Nesci, 'Overcoming Barriers to Preventing Domestic Violence Services for Women from Culturally and Linguistically Diverse Backgrounds,' (2006) 19:2 *Parity* 44.

<sup>64</sup> Kate Fraser, *Out of Africa and into Court: The Legal Problems of African Refugees* (Footscray Community Legal Centre, 2009) 43.

<sup>65</sup> Survivor 26.

Survivors who identified as CALD or as having partners from CALD communities spoke of feeling as though their place in their community was jeopardised by formal responses to family violence.<sup>66</sup> Workers agreed that in some communities there is stigma associated with disclosing violence to police, as though:

[i]t is your fault, you're bringing our community into disrepute. They [survivors] do not want to see anyone from their culture [at court] because instead of feeling safer they feel more unsafe.<sup>67</sup>

Women spoke of their concerns that they might be punished by or excluded from their community. A Turkish women, for instance, was confronted by a large group of women from her community attending her FVIO hearing, who attempted to assault her outside the court. Another woman described how her partner's large Samoan family came to court and sat in during the hearing. She felt that this was not only a show of support for her abuser, but also an attempt to let her know that she was now not welcome in the family or community.

However, the diversity of cultures and communities must be stressed, and these responses are by no means universal; and any assumption otherwise is dangerous. In the past CALD women have reported encountering racism from state agents (such as police and magistrates) because their culture was supposedly accepting of violence, resulting in 'implicit manifestation of racism through ill-advised notions of deviance, and subsequently, notions of "deservability"'.<sup>68</sup> There is no singular CALD community or experience, and, as inTouch has emphasised, '[r]ecognising these differences, and the factors that enable women to act, are critical to any future solution'.<sup>69</sup>

### **Gun ownership and homemade weapons**

In this study workers spoke about the prevalence not only of firearms but also of homemade weapons. Gun ownership is higher in rural than urban areas.<sup>70</sup> Unsurprisingly, then, in 2000, WESNET noted that '[g]uns are a prominent presence in rural life in a way not equalled in

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<sup>66</sup> On this notion see also: Rees and Pease with the Immigrant Women's Domestic Violence Service, *Refugee Settlement, Safety and Wellbeing*, above n 45, part 3, 30.

<sup>67</sup> Advocates 32.

<sup>68</sup> Hanna Assafiri and Maria Dimopoulos, 'NESB Woman as Deviant: the Legal System's Treatment of NESB Women Victims of Male Violence' (Paper presented at the Australian Institute of Criminology The Criminal Justice System in a Multicultural Society Conference, Melbourne, 4-6 May 1993) 1-5, see 2.

<sup>69</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 21.

<sup>70</sup> Hogg and Carrington, 'Violence, Spatiality and Other Rurals,' above n 32, part 2, 311. See also National Health and Medical Research Council Health Advisory Committee, *Report on a Review of Literature on the Epidemiology of Violence in Rural and Remote Australia and Resources to the Management of Violence* (National Health and Medical Research Council, 2002) 4, 27.

metropolitan settings and this is a factor increasing women's vulnerability'.<sup>71</sup> Guns are 'symbols of deeply held psychosocial drives to be self-governing and autonomous individuals fostered in these environments'.<sup>72</sup> Gun culture – including attitudes towards guns, and the place and purpose they occupy in the rural landscape – and perpetrator access to guns and other weapons impacted survivors' feelings of safety, and experiences of and responses to family violence in rural areas. As Wendt explains, '[r]ural isolation and acceptance of guns for hunting and self-protection aggravates the tendency [for abusers] to use guns for purposes of intimidation' and 'highlights the potential for violence'.<sup>73</sup> In discussing these issues, survivors spoke about both the covert and overt threats associated with firearms.<sup>74</sup> First, simply knowing that their abuser had access to firearms could evoke fear, contribute to feelings of powerlessness and dissuade survivors from seeking assistance. Second, survivors recounted instances when their abuser threatened them, their children or self-harm if the women sought to leave the relationship. Firearms were not always referenced in these threats, yet they were factors seriously considered by survivors because of the perpetrator's access to firearms. Many workers also spoke of the presence of firearms and other weapons in rural areas as significantly impacting on women's experiences of and responses to abuse.

The FVIO application form asks applicants<sup>75</sup> to identify whether the respondent has a gun, access to a gun or a firearm licence, and when an FVIO is issued the respondent's gun licence is cancelled, regardless of whether or not women have mentioned their possession of firearms in the application.<sup>76</sup> However, in the event that an undertaking<sup>77</sup> is made, respondents are permitted to retain their firearm licence and firearm. Survivors were not always aware of this distinction between FVIOs and undertakings – one survivor was alarmed that police had not told her that her abuser could retain his firearms with an undertaking. The police response to perpetrator firearm possession in cases of family violence has been an issue of concern for some time. A 1993 study conducted by Victoria Police found that 'police were, in general, unaware or neglectful of their responsibilities and authorities in regards to firearms', and that 'almost two-thirds' of officers

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<sup>71</sup> WESNET, *Domestic Violence in Regional Australia*, above n 23, part 1, 16, see also 17.

<sup>72</sup> Hogg and Carrington, 'Violence, Spatiality and *Other* Rurals,' above n 32, part 2, 311.

<sup>73</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1, 34.

<sup>74</sup> This has also be observed by: Hogg and Carrington, 'Violence, Spatiality and *Other* Rurals,' above n 32, part 2, 311-12.

<sup>75</sup> See glossary, 187.

<sup>76</sup> Magistrates' Court of Victoria, *Form FVIO1: Information for Application for an Intervention Order* (Magistrates' Court of Victoria, 2011) 5.

<sup>77</sup> See glossary, 190.

interviewed ‘*did not* make inquiries regarding the presence of firearms at family incidents’.<sup>78</sup> However, the researchers note that over the past twenty years police have become much more responsive to firearm possession than they previously were, and that, in identifying difficulties encountered by survivors in rural areas, the *Code of Practice for the Investigation of Family Violence* (hereafter, the *Code of Practice*) does state that ‘[t]he accessibilities of guns in rural communities can also increase women’s vulnerability to violence’.<sup>79</sup>

### **Limited alternative and crisis accommodation**

Survivors in regional and rural areas discussed the challenges they faced when seeking to obtain exclusion orders, and workers suggested that it is particularly difficult for women on farms to secure such an order. Some survivors reported that, when asked by police officers to find alternative accommodation, their abusers had lied and said this was not possible, resulting in survivors being pressured to leave the family residence. After Samantha’s abuser told police ‘I haven’t got anywhere to go’, officers asked her to leave, despite her assertion that his parents lived within walking distance so he could stay there. She said that there were other occasions when officers recommended that she leave instead of her abuser and, consequently, she maintained that she did not ‘have any faith in police’.<sup>80</sup> Other survivors spoke of instances when police assisted them in locating alternative accommodation – for example, housing survivors in motels, where possible. However, officers were limited by the available resources and could not always assist in relocation. One survivor said that, before her court appearance for an FVIO, police moved her and her mother to a location closer to a police station. Yet, as she identified, in moving to a potentially safer zone, she had to move away from her home and was isolated from her support networks. Furthermore, she was ‘back in his hometown and all his family lived there’.<sup>81</sup>

Survivors described being unable to locate private accommodation (particularly in the event of declining rental markets) and that they consequently had to remain in the family home with their abuser. Workers commented that the amount of available caravan housing, for instance, had declined in recent years. One lawyer believed that ‘if you have the resources to rehouse yourself you have a better ability to protect yourself’.<sup>82</sup> There is limited crisis, short- and long-term (private

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<sup>78</sup> Michelle Wareham, ‘Police Response to Family Violence in Victoria’ (Paper Presented at the Second National Conference on Violence convened by the Australian Institute of Criminology, Canberra, 15-18 June 1993) 5. Emphasis of original.

<sup>79</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 14.

<sup>80</sup> Survivor 11.

<sup>81</sup> Survivor 16.

<sup>82</sup> Advocate 31.

and public housing) accommodation available for women and children escaping family violence generally; and in regional and rural areas accommodation is further limited which can significantly influence a survivor's decision to leave.<sup>83</sup> As Josie explained, '[t]here was no-one who could provide quick accommodation or support'.<sup>84</sup> Workers told the researchers that, compounding the trauma associated with family violence, it was not uncommon for women to have debts – such as to the Office of Housing – for the costs of cleaning and restoring property damaged during family violence incidents.

Survivors and workers identified that housing is scarce in rural areas and housing that has suitable access and support for women and children with disabilities, or that is culturally appropriate, is scarcer still. Additionally, refuges and alternative accommodation are typically located considerable distances from survivors' homes and support networks. Survivors who wanted their children to maintain contact with their father expressed anxiety when housing – for them or their abuser – was located significant distances apart. Their desire for their children to maintain a relationship with their father, or pressures from their children, abuser or broader family networks to maintain this relationship, could lead to a survivor's reluctance to relocate. Additionally, a worker maintained that 'the risk of breaches as a result of [abuser] homelessness is really significant'.<sup>85</sup>

Refuges, where available, do not always cater to the needs of survivors. The Victorian Women with Disabilities Network Advocacy has noted that for some survivors with disabilities 'going to a refuge is not an option even though the alternatives are not entirely safe' because of a range of problems, such as the physical design of the building. Additionally, survivors who have children with disabilities who seek alternative accommodation may need to relocate a considerable distance from their child's special school or therapy. In Victoria, crisis accommodation has been developed with specialised disability units and capabilities to house survivors with disabilities and their children, including older sons who would otherwise be excluded from other forms of crisis accommodation.<sup>86</sup> However, more accommodation for survivors with disabilities and children with disabilities is urgently needed. In relation to other unmet needs, ATSI support workers noted that it is difficult to find accommodation with enough rooms to house an entire family nucleus –

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<sup>83</sup> Parliament of Victoria Rural and Regional Committee, *Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria* (Government Printer for the State of Victoria, 2010) 15, 84, 109, 141, 165, 175, 207, 209, 249.

<sup>84</sup> Survivor 7.

<sup>85</sup> Advocate 31.

<sup>86</sup> Healey et al, *Building the Evidence*, above n 83, part 2, 55.

children and other family members – and stressed the importance of keeping mothers with their children. Survivors and workers sought housing that met their needs and was safe and secure. Finally, they desired holistic accommodation, featuring, in the words of one survivor, ‘architecture and plants’, intimating that they desired places where they could find a sense of peace and wellbeing.

### **Less access to support services and legal services**

Workers classified support services in rural areas as largely ad hoc, lacking coordination and under resourced.<sup>87</sup> Furthermore, as workers in this study recognised, and research elsewhere has shown, some groups within the community such as refugee, CALD, ATSI and disabled women affected by family violence might require or would benefit from more specialised resources and services that are currently limited or difficult to access outside metropolitan areas.<sup>88</sup> Additionally, support workers might be unable to travel to court with women when it is located a significant distance from their work base, or may be unable to operate outside their catchment areas. The fear and anxiety that many survivors described feeling in court was most certainly compounded by the absence of a support worker by their side. As the participants in this research observed, and the Legal Australia-Wide Survey and CRRLJ researchers have recently discussed, legal services – Legal Aid, CLCs and private legal offices – are also fewer in number and less accessible in regional and rural areas.<sup>89</sup> Fewer legal representatives are available and it is difficult to attract and retain law graduates outside metropolitan areas.<sup>90</sup> Further complicating the issue, in cases where women’s abusers have already accessed legal services in the same area where she is seeking assistance, a conflict of interest could arise, thereby hindering women’s ability to obtain legal representation.<sup>91</sup>

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<sup>87</sup> This has also been discussed by Wendt, ‘Building and Sustaining Local Co-ordination’ above n 24, part 1, 45

<sup>88</sup> See, for instance: WESNET, *Domestic Violence in Regional Australia: A Literature Review*, above n 23, part 1, 18.

<sup>89</sup> Jordan and Phillips, *Women’s Experiences of Surviving Family Violence and Accessing the Magistrates’ Court in Geelong*, above n 1, part 1, 30-32; Christine Coumarelos et al., *Legal Australia-Wide Survey: Legal Need in Victoria, Access to Justice and Legal Need Volume 14* (Law and Justice Foundation of NSW, 2012); Kyle, Coverdale and Powers, *Conflict of Interest in Victorian Rural and Regional Legal Practice*, above n 7, part 1, 27.

<sup>90</sup> Kyle, Coverdale and Powers, *Conflict of Interest in Victoria Rural and Regional Legal Practice* above n 7, part 1, 89, 27.

<sup>91</sup> For more on this see *ibid.*

## Complicated financial arrangements and pressures

There are fewer employment and educational opportunities in regional and rural areas, which can affect the financial status and security of residents.<sup>92</sup> Family violence agencies have maintained that factors such as:

increasing rural poverty and the withdrawal of local services due to economic restructuring leaves many women economically and socially dependent on their male partners, and unable to find employment or access training.<sup>93</sup>

Women, in particular women who reside on farms, also often encounter the complicated financial arrangements, and associated economic pressures, involved in jointly running small family businesses, and often possess limited private finances as a result.<sup>94</sup> In such circumstances women who wish to seek alternative accommodation or obtain private legal representation to assist in family violence and family law matters might be unable to do so. As Coorey explained in her study:

For the majority of women, the option of leaving town was not available. Most claimed to be financially deprived with insufficient money for food and clothing for themselves and their children, let alone for the cost of transport out of town and the means to survive.... The expense of travelling sufficiently far away and of establishing themselves in a new location in order to be safe from harassment was well beyond the means of most women.<sup>95</sup>

Women can also be reluctant to leave relationships and rural properties if they feel that doing so might jeopardise the survival of the family farm or business and, consequently, the family livelihood and economic security of their children. Complicated family trust structures and succession issues can compound this and place a greater burden on women. Additionally, CALD women who have been 'sponsored to come to Australia or hold a visa with limited rights may have no access to health care or income support'; they also might be unable to work while their applications for residency are being reviewed and so may not be able to financially support themselves without the assistance of their abuser.<sup>96</sup>

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<sup>92</sup> WESNET, *Domestic Violence in Regional Australia: A Literature Review*, above n 23, part 1, 14.

<sup>93</sup> Immigrant Women's Domestic Violence Service, *The Right to be Safe from Domestic Violence*, above n 23, part 1, 3.

<sup>94</sup> Wendt, 'Building and Sustaining Local Co-ordination,' above n 24, part 1, 45; WESNET, *Domestic Violence in Regional Australia: A Literature Review*, above n 23, part 1, 16, 18.

<sup>95</sup> Coorey, *Domestic Violence and the Police*, above n 15, part 3, 109-110

<sup>96</sup> Allimant and Ostapiej-Piatkowski, 'Supporting Women from CALD Backgrounds Who are Victims / Survivors of Sexual Violence,' above n 56, part 3, 5.

## After disaster

International research indicates that violence against women increases after large-scale disasters, which can include floods, droughts and fires – phenomena not uncommon in rural areas.<sup>97</sup> Seminal research conducted by Parkinson, Zara and Weiss of Women’s Health Goulburn North East on the incidence of family violence following the ‘Black Saturday’ bushfires of 2011<sup>98</sup> affirms that in Australia this is also the case. The authors found that nine out of the sixteen survivors of family violence they interviewed experienced ‘no violence before the fires and seven of these were stable, non-violent relationships’.<sup>99</sup> On the barriers facing these survivors, Parkinson and Zara note that after disaster women often feel (or are made to feel) disloyal for speaking out about the family violence they have experienced, and may be discouraged from seeking assistance in circumstances where ‘stress levels are high, perpetrators may have been “heroes” and where men are often unemployed and sometimes suicidal’.<sup>100</sup> Such research indicates that, in the aftermath of disaster, tailored support services for both men and women are needed, while also highlighting the value of increasing resources and funding and resourcing for family violence support services more generally.

## Overcoming barriers and boundaries

Despite often operating with limited resources, workers demonstrated great initiative and ingenuity in the ways they advocate for women in rural areas. Some services offer advocacy over the telephone or provide information on their websites. Use of the Internet and ICT can provide mediums for the dissemination of ‘potentially vast amounts of up-to-date information to a large audience, at relatively low cost’.<sup>101</sup> There are many communities that could benefit from ICT advocacy. Research indicates that women and young people in ATSI communities in rural and remote Australia are high adopters of technology, where it is available.<sup>102</sup> Hand, Chung and Peters note that ‘in a geographically dispersed country like Australia, this increases access to counselling

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<sup>97</sup> Parkinson, *The Way He Tells it*, above n 52, part 1, 2.

<sup>98</sup> Ibid, 1-3. See also: Zara and Parkinson, *Men on Black Saturday: Risk and Opportunities for Change, Vol.2*, above n 52, part 1; Weiss, Zara and Parkinson, *Men on Black Saturday: Risks and Opportunities for Change, Vol. 3*, above n 52, part 1.

<sup>99</sup> Parkinson, *The Way He Tells It: Relationships after Black Saturday*, above n 52, part 1, 6.

<sup>100</sup> Ibid 3, 9.

<sup>101</sup> Tammy Hand, Donna Chung and Margaret Peters, ‘The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation,’ *Stakeholder Paper* (Australian Domestic & Family Violence Clearinghouse Sydney, 2009) 13.

<sup>102</sup> Kerstin Zander, Dean Carson and Andrew Taylor, ‘Technology Adoption and Temporary Indigenous Mobility in the Northern Territory,’ *Research Brief* (Charles Darwin University, 2012) 4, 5.

services for those in rural and remote areas where transport and distance is a barrier'.<sup>103</sup> Additionally, ICT can provide survivors with anonymity and confidentiality, although McKenzie warns that the use of social media to raise awareness and garner community support on family violence does bring risks for 'agencies, staff members and survivors in relation to confidentiality, privacy, and potential legal issues'.<sup>104</sup> Furthermore, there are potential problems with text-based advocacy via ICT: it may be difficult to relay complex matters into shorter, text-based messages; and conversations may be truncated (possibly leading to misunderstandings) or strained in the absence of verbal cues.<sup>105</sup>

A unique, new (and as yet temporary) initiative, the 'Women, Lawyers, Workers Project', seeks to improve access to justice for women who are experiencing or have experienced family violence, through the use of the Skype platform. Survivors can receive legal advice arranged via a family violence specialist (associated with the Centre Against Violence, Marian Community, Nexus Primary Health, Primary Care Connect or Mungabareena Aboriginal Corporation) who has a laptop or iPad and operates as an access point, thereby linking the survivor with a legal worker at the Women's Legal Service. The service can be used wherever there is Internet connectivity. Communications via Skype are encrypted, ensuring that conversations between workers and survivors are private and protected, and only project partners have access to the Skype address. The project has the potential to overcome significant social and geographic boundaries, in essence creating new, borderless, confidential and safe spaces where survivors can obtain assistance. An additional benefit of the project is that family violence workers are given advice to inform their practice and have access to a 'Tool Kit' which 'covers all sorts of legal issues that they may need to consider.... Many of the issues workers may not have been aware of or considered before'.<sup>106</sup>

The potentials of ICT advocacy are great; but nonetheless not all women feel comfortable or are able to communicate effectively with workers or lawyers. There has been little assessment of ICT advocacy initiatives, but it is likely that many are premised on General Australian English (GAE)

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<sup>103</sup> Ibid, 14.

<sup>104</sup> Mandy McKenzie, 'New Technology, New Issues: Safety Planning and Technology Education,' (2009) 3 *DVRCV Quarterly*, 14-16, 15.

<sup>105</sup> Ibid, 15.

<sup>106</sup> Skype technology allows for free voice or video calls or text messaging via a tablet, computer or smart. See Elise, Whittaker and Kei Judd, 'Women, Lawyers, Workers' (Paper presented to the National Association of Community Legal Centres Conference, Cairns, 26 June 2013); Women's Health Goulbourn North East et al., *Women, Lawyers and Workers Family Violence Project: Information for Women* (Women's Legal Service Victoria, 2012); Women's Health Goulbourn North East et al., *Women, Lawyers and Workers Family Violence Project: Information for Workers* (Women's Legal Service Victoria, 2012).

and do not accommodate language or cultural differences or disabilities. Also of concern is the issue of a survivor's access to ICT, not only due to perpetrator efforts to restrict this, but also because ICT is confiscated by police. The Aboriginal Family Violence Prevention and Legal Service (FVPLS) has received anecdotal reports of ATSI women's mobile phones being seized by officers to use as evidence in family violence matters, thereby removing their means not only to call for assistance, but also to access advocacy. Additionally, it is important to note that because of cost and connectivity challenges rural Australians experience a 'digital divide' – that is, their access to the Internet and ICT is significantly less than that of Australians in metropolitan and sometimes regional areas.<sup>107</sup> Furthermore, discrepancies in Internet and ICT use and access have been noted based on differences related to disability, ethnic and cultural background, gender, education level, ICT skillset and access to technological and social support.<sup>108</sup> Essentially, as Hacker, Mason and Morgan surmise, 'online inequalities often mirror offline ones' in regards to poverty and disadvantage.<sup>109</sup> Given these barriers, the initiatives of advocates to provide information via multiple paths – telephone, Internet and ICT – and through alternative channels (for instance, a family violence specialist's computer) are all the more important, and all the more remarkable.

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<sup>107</sup> Emma Rooksby, John Weckert and Richard Lucas, 'The Digital Divide in Australia: Is Rural Australia Losing Out?' in Emma Rooksby and John Weckert (eds), *Information Technology and Social Justice* (Information Science Publishing, 2007) 240-261; Jennifer Curtin, 'A Digital Divide in Rural and Regional Australia,' (2001-2002) 1 *Current Issues Brief* available at [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/CIB/cib0102/02CIB01](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib0102/02CIB01); Suzanne Willis and Bruce Tranter, 'Beyond the 'Digital Divide': Internet Diffusion and Inequality in Australia,' (2006) 42:1 *Journal of Sociology* 43-59, see 46-47.

<sup>108</sup> Mohan J. Dutta-Bergman, 'Access to the Internet in the Context of Community Participation and Community Satisfaction,' (2005) 7:1 *New Media Society* 89-109, 84-97; Paul DiMaggio et al., 'Social Implications of the Internet,' (2001) 27 *Annual Review of Sociology* 307-36, 310; Gustavo S. Mesch, 'Minority Status and the Use of Computer-Mediated Communication: A Test of the Social Diversification Hypothesis,' (2012) 39:3 *Communication Research* 317-337, see 318.

<sup>109</sup> Kenneth L. Hacker, Shana M. Mason and Eric L. Morgan, 'Digital Disempowerment,' in Rooksby and Weckert (eds) *Information Technology and Social Justice*, above n 107, part 3, 112-47, see 117-19, 136.



## Part 4: Survivors and the criminal justice system

### *Victoria Police and family violence*

*The manner in which police handle the report is crucial, particularly when the victim has called for help. The first contact a person has with police can influence their experiences and impressions of the justice system and their future decisions.<sup>110</sup>*

*[F]amily violence isn't a discrete phenomenon, separate from the prevailing culture of the day. It doesn't exist in a vacuum. Family violence exists on a long continuum of violence against women, and not all of that violence is physical. This continuum of violence is unified by awful attitudes against [sic] women, and illustrated by some frightening statistics.<sup>111</sup>*

As family violence has been identified as an issue of public policy and broader community concern, police forces in Australia have assumed an active role in enhancing and assessing their response to what was once considered a 'private matter'.<sup>112</sup> With the development of specific legislation pertaining to family violence, Victoria Police has undergone substantial reform, 'reflecting the expectation that police would be more active in dealing with situations of family violence and more proactive on behalf of victims'.<sup>113</sup> As part of its efforts to protect and empower survivors and reduce family violence, Victoria Police has, for instance, implemented a raft of policies and practices as well as specialist units and officers, and cultivated strong links with others – government and non-government agencies – involved in responding to family violence. For many years, the importance of the police response to family violence has been acknowledged by officers. In the 1985 Neesham Inquiry into Victoria Police, for example, officers emphasised the 'uppermost need for training for the police role' around 'domestic violence and conflict'.<sup>114</sup> Officers have also demonstrated awareness of the barriers to women seeking assistance, including limitations on the availability and accessibility of support services and alternative housing accommodation.<sup>115</sup> Victoria Police's commitment to and strategy for responding to family violence has been most recently discussed in the 2014 revised edition of the Victoria Police *Code of Practice*. The code aims to outline best practice and integrated responses to family violence;

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<sup>110</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 9.

<sup>111</sup> Ken Lay, 'We Need to Change Our Thinking Around Domestic Violence,' (22 October 2013) *Victoria Police News*.

<sup>112</sup> Mark Finnane, *Police and Government: Histories of Policing in Australia* (Oxford University Press, 1994) 104-108.

<sup>113</sup> Wareham, 'Police Response to Family Violence in Victoria,' above n 78, part 3, 1.

<sup>114</sup> Finnane, *Police and Government*, above n 3, part 4, 108; T.A. Neesham, *Report of the Committee of Inquiry – Victoria Police Force* (Ministry for Police and Emergency, 1985).

<sup>115</sup> Wareham, 'Police Response to Family Violence in Victoria,' above n 78, part 3, 3.

increase safety for survivors; minimise trauma; propose early intervention strategies to break the cycle of family violence; support and foster reporting; and hold perpetrators accountable.<sup>116</sup>

### **Survivors' experiences of accessing police: positive experiences**

The researchers (like many of the support workers interviewed) recognise the importance Victoria Police has placed on responding to family violence and the incredible role performed by many officers, often under extremely difficult circumstances. In this study, survivors who had positive interactions with police described officers who were sensitive, supportive and skilled; listened to and validated their stories and experiences; explained the procedures and processes of the police and courts; provided links and referrals to support services; found private and safe spaces to meet with survivors; and endeavoured to comfort and protect survivors' children.

Numerous survivors who provided positive accounts of police found that officers were 'really good', 'easy to talk to' and ensured that survivors 'feel comfortable' discussing sensitive matters.<sup>117</sup> Bee felt that the officers she spoke with were understanding and offered guidance that was both useful and empowering. She recalled that:

[t]hey [the officers] were very caring and compassionate, very calming. They listened. When I asked for advice, the advice I got from them was aimed at supporting me ... advice to help me stand up for myself and do what I need to do to support myself and ensure I'm looked after.<sup>118</sup>

Katherine also valued the way officers sought to support and reassure her, recalling how one officer she spoke with 'said I was really strong'.<sup>119</sup>

Survivors and workers alike found specialist police – Family Violence Liaison Officers (FVLOs) and the Family Violence Unit – to be effective. 'The family violence unit... We can't fault them', one worker remarked.<sup>120</sup> FVLOs were regarded as 'dedicated workers' who had made a 'vast difference' because they were 'properly trained and integrated into the system'.<sup>121</sup> Survivors emphasised that FVLOs understand that court processes can be confusing and the court space intimidating. They recounted how FVLOs take care to demystify court procedures and walk women to their cars after court appearances if they felt unsafe. Importantly, while there were

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<sup>116</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 2.

<sup>117</sup> For instance, Survivors 5, 15, 16.

<sup>118</sup> Survivor 9.

<sup>119</sup> Survivor 5.

<sup>120</sup> Advocate 24.

<sup>121</sup> Advocate 27.

positive accounts of the ways FVLOs assisted survivors, non-specialist officers also demonstrated awareness of the barriers and challenges survivors experienced. Recognising survivors' need for private and safe spaces to discuss their experience of family violence, some officers, for example, found separate rooms at the police station to meet with women. Officers were also said to go to great lengths to ensure that the children they spoke with were at ease, and to protect them from hearing their mothers talking about the violence they experienced. In one instance, an officer played with a survivor's child outside the house, while another spoke with her inside.<sup>122</sup> The compassion, ingenuity and proficiency of these officers were as highly valued as that of specialist officers whom survivors encountered. Survivors also appreciated officers who responded quickly, made themselves available to survivors and kept survivors informed about the status of their case.

Survivors valued police referring them to support services. Workers at ATSI support agencies noted that effort had been made to improve police responses to violence in ATSI communities and that officers are now more likely to refer women to support services 'as a matter of course'.<sup>123</sup> Workers also spoke of the presence of Aboriginal Community Liaison Officers (ACLOs) at stations as 'helpful' because of their awareness of and respect for cultural issues and their family violence training.<sup>124</sup> In this regard, CALD survivors spoke of being referred to services, but not necessarily culturally appropriate services. Nonetheless, Sunny, a CALD survivor, was also very happy with the police who assisted her – 'the police have been brilliant, lovely ... a miracle', she enthused, 'the worst job they are doing in the best way'.<sup>125</sup> Support workers made mention of the strong relationships that had developed between their services and Family Violence Units, and what they regarded as a great response to family violence, from these units.

In 1998, writing on rural police responses to sexual and family violence, Nicholson suggested that 'police endeavour to meet the needs of the victim but prefer to hand over to a female colleague'.<sup>126</sup> She maintained that there was gender differentiation in the way male and female officers responded to women experiencing violence and that there were fewer women police at rural police stations.<sup>127</sup> However, while they still might be underrepresented, in recent years the numbers of female officers servicing and stationed in rural locations has increased. Police policy and practice in regards to family violence has also transformed, as evidenced by the fact that

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<sup>122</sup> Survivor 12.

<sup>123</sup> Advocates 28.

<sup>124</sup> Survivor 25, Advocates 28.

<sup>125</sup> Survivor 24.

<sup>126</sup> Nicholson, 'Only a Domestic,' above n 38, part 3, 18.

<sup>127</sup> Ibid.

survivors in this study did not differentiate between the genders of officers as determining whether their experience was positive or negative. The gender of an officer had less bearing in this study than in Nicholson's, which seems to indicate that male officers were better equipped to assist survivors of family violence than in previous years.

### **Survivors' experiences of accessing police: negative experiences**

Survivors' experiences of police varied greatly and some reported negative experiences. Perhaps most concerning was that their experiences with police when reporting family violence were polarised, suggesting that the *Code of Practice* has not been uniformly implemented. Survivors who reported negative experiences with police talked of officers who were intimidating; did not validate their experiences (especially if they had experienced verbal, psychological or emotional abuse); compelled them to discuss their abuse in public areas of the police station or in front of their children; did not keep them informed about court proceedings; offered advice relating to court processes that survivors felt was conflicting or confusing; pressured them to accept undertakings as opposed to FVIOs (some survivors were disturbed that, consequently, their abusers were allowed to retain their firearms); delayed serving interim orders; and were reluctant to respond to breaches of FVIOs. Such negative encounters with police could result in a reluctance to seek assistance from police at a later date.

Women wanted to 'feel heard'<sup>128</sup>, but some survivors felt that police were dismissive of their abuse; 'they seem to brush it off', Samantha lamented.<sup>129</sup> While Josie felt some of the police she spoke with were supportive, she reported that other officers 'weren't respectful' and 'treat[ed] you like it [was] your fault'.<sup>130</sup> Jane alleged that she had been assaulted in front of a police officer who then failed to act; 'I said to him [the officer], "Are you going to do something about that?" And he said, "Something about what?"'.<sup>131</sup>

The *Code of Practice* provides information about the numerous forms (acts, behaviours and tactics) that family violence can assume.<sup>132</sup> However, many survivors in this research who had experienced non-physical forms of family violence – in particular verbal, psychological and emotional abuse – spoke of feeling as though 'police really downplayed' their abuse, and like they

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<sup>128</sup> Survivor 2.

<sup>129</sup> Survivor 11.

<sup>130</sup> Survivor 7.

<sup>131</sup> Survivor 3.

<sup>132</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 3.

did not 'validate it or understand it'.<sup>133</sup> Angela, for instance, felt uncomfortable and minimised when she reported her non-physical abuse. 'I had three police officers ... with their guns, kind of all standing over me', she recalled, 'telling me, my interpretation of it was that because he hadn't actually physically assaulted me, I had to just suck it up and deal with it'.<sup>134</sup> Feeling as though their abuse was downplayed resulted in some survivors deciding not to contact police after further incidents, because, as Macy said, 'I didn't feel like I could just go in [to the police station] and really feel protected or safe'.<sup>135</sup>

The *Code of Practice* outlines the way family violence can impact children and includes recommendations for police responses to children who have been affected by family violence.<sup>136</sup> While some survivors described the great lengths to which officers went to ensure that their children were occupied while they spoke with police, in one particularly alarming case, officers insisted on speaking with the survivor, Bron, in front of her son. 'I wasn't happy and asked if I could take my boy home', she recalled, '[I said I was] cooking him roast pork for dinner. I just wanted him out of the station' but 'they asked if I was calling them pigs because of the roast pork comment'; '[t]hey didn't take it very seriously and laughed at me'.<sup>137</sup> Speaking about the subsequent effects on her son, she explained that he now:

thinks he saw the violence. He is convinced of it. He has it set in his mind. He was there. He said, 'Oh I wish I could have woken up and protected you'. But he wasn't there. He just heard me talking about it to police.<sup>138</sup>

Dawn also felt that she 'should have been able to go into the privacy of the room or make an appointment [to speak with officers]'. Instead, officers '[t]ook my statement on the front porch, with the torches on and my daughter listening'.<sup>139</sup>

Some workers contended that '[f]or women [seeking police assistance in regards to family violence], having a criminal record is not an issue'<sup>140</sup>, although it is worth noting that some women who were known to police or who had a criminal record claimed that 'police won't believe you [about the abuse]'.<sup>141</sup> In this vein, a youth advocate in a rural area spoke of the difficulties

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<sup>133</sup> Survivor 10.

<sup>134</sup> Survivor 6.

<sup>135</sup> Survivor 10.

<sup>136</sup> Victoria Police, *Code of Practice*, above n 33, part 1, see for instance: 9-10, 37, 45.

<sup>137</sup> Survivor 30.

<sup>138</sup> Ibid.

<sup>139</sup> Survivor 29.

<sup>140</sup> Survivor 25.

<sup>141</sup> Survivor 17.

experienced by young people who were known to police when reporting family violence – police ‘don’t take violence against them seriously’, she maintained.<sup>142</sup> A perception that they would not be believed by police or would in some way be regarded as culpable for their abuse could result in a reluctance to contact police. For instance, after contacting police for assistance, one survivor was put into the back of police van and transported to the police station – she maintained that she would not contact them again.

ATSI support workers noted that ATSI survivors are not always comfortable talking to general officers about violence. The researchers also heard of women not wanting to identify as ATSI because of concerns that they would experience worse treatment by police. FVLOs and ACLOs were largely regarded positively by ATSI survivors and workers alike, but general police were, some workers suggested, ‘more of a lottery’, at worst displaying culturally insensitive or racist behaviour and not always attending with an ACLO, as is recommended (if possible) in the *Code of Practice*.<sup>143</sup> In the interests of providing a ‘culturally appropriate response’, the code proposes that police ask ‘if a person or their children, if any, is Aboriginal or identifies as Aboriginal or Torres Strait Islander’.<sup>144</sup> Workers remarked that officers might be reluctant to ask survivors whether they identify as Aboriginal or Torres Strait Islander, for fear that the question may be regarded as offensive. ‘Police seem to find it difficult to ask the woman if she is Koori or not,’ workers explained, ‘so they don’t mark it down on paper’.<sup>145</sup> ‘Police say to us, “How do we ask [if a woman is Indigenous or not]?”’<sup>146</sup> The solution, they believed was obvious, ‘Just open your mouth and ask the question’.<sup>147</sup> In the interest of providing a culturally appropriate response, workers stressed that it is important that officers do ask women this question, and that such an approach would be appreciated by survivors.

Women understood that their local police stations are not always fully staffed and that officers are often overworked. However, they expressed frustration with police delays in serving their abuser with interim orders. In addition to feeling as though officers did not regard their orders as important, women worried that they were vulnerable to further abuse and felt unsafe until interim orders were issued. In one case a survivor was ‘couch surfing until the order was

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<sup>142</sup> Advocate 26.

<sup>143</sup> Advocate s 28. Victoria Police, *Code of Practice*, above n 33, part 1, 11.

<sup>144</sup> Ibid.

<sup>145</sup> Advocates 36.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

served'.<sup>148</sup> Survivors also reported fearing for their safety when police issued abusers with verbal warnings instead of pursuing FVIOs or interim orders. Workers did recognise that officers now respond to family violence more proactively than ever before, but asserted that interim protection needs to be extended.

Survivors were upset when they could not locate an FVLO or did not have an officer who could act as a contact point to keep them informed about the progress of their case. Researchers heard accounts of survivors being misinformed about court appearance dates; in one case this resulted in an FVIO being struck out. Many survivors had positive experiences with police, but reported anxiety when having to repeat their story to a number of officers and being unable to contact officers or FVLOs with whom they had previously spoken. Women who lived in regions serviced by multiple police stations complained that sometimes officers said they were unable to assist them, because files pertaining to their case are housed at other police stations in the region. Law enforcement data (such as pertaining to family violence incidents, FVIOs, pending charges, outstanding warrants and survivor involvements) is stored on the online Victoria Police Law Enforcement Assistance Program (LEAP), which is updated twenty-four hours a day. Depending on their seniority and role, officers are granted different access level to LEAP. Information pertaining to a survivor's case may be available on LEAP, however survivors may be referred to a specific officer, leading an investigation, particularly when their case has a significant history or complexities. In such instances information about their case will not necessarily be uploaded to LEAP or accessible to other officers. This is an issue of concern for survivors, when officers from other stations that operate in their region cannot assist or advise them of the progress of their case. Frustrated and anxious, women in this situation are reliant on both the availability of an investigating officer and a police station's hours of operation, which can be highly limited in regional and rural places.

On the issue of being informed about the status of their case, Kelly and Yvonne objected to officers not notifying them of police intervention where breaches of FVIOs occurred.<sup>149</sup> Indeed, there was much frustration with police responses to breaches on a whole. Macy and Bella spoke of the difficulty of convincing officers to respond to FVIO breaches.<sup>150</sup> 'You have to be very strong and assertive with the police', Macy warned, 'if you are someone who is intimidated by police you just won't get your breaches followed up'.<sup>151</sup> Samantha agreed and, after feeling that officers

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<sup>148</sup> Survivor 4.

<sup>149</sup> Survivor 20 and 27.

<sup>150</sup> Survivor 10, 18.

<sup>151</sup> Survivor 10.

‘didn’t want to listen to me’ and respond to breaches, she ‘lost faith in the police’.<sup>152</sup> When Kelly reported breaches she was told, ‘we need something really big’ to respond. Waiting for ‘something really big’ was unnerving and left her ‘feel[ing] like I am bait’. Many survivors identified problems related to police responding to technological harassment and technology-facilitated stalking and breaches via ICT, as will be discussed in greater detail in this report.<sup>153</sup>

While some survivors found that officers endeavour to demystify police and court processes, others struggled to persuade officers to assist them or were confused when officers gave what they believed to be conflicting advice or ‘explained it [procedures] in full legalese’.<sup>154</sup> Not all survivors were satisfied with the aid they received from police at court. At worst, in one disturbing case, officers misplaced photographic evidence of a survivor’s assault. Researchers do acknowledge that the was likely an anomaly; Victoria Police officers receive extensive training concerning evidence collection and storage and the *Code of Practice* outlines the types of information and evidence police should gather and record pertaining to family violence incidents.<sup>155</sup>

Numerous survivors were dissatisfied with police actions in regards to court processes. In particular, survivors were disappointed when police advocated for FVIOs for shorter time periods than they had requested, or when police did not insist that their children be included on FVIOs. However, in this regard, there is extensive consideration of how police might protect children in the *Code of Practice*, and workers acknowledge that in recent years officers have been more likely to include children on FVIO applications.<sup>156</sup> Survivors were also dismayed by what they perceived to be pressure from police to accept undertakings, without personally comprehending what this entailed, and later expressed disappointment that they had not been granted an FVIO. One rural survivor was frustrated that police had not told her that her abuser could retain his firearms with an undertaking.

In rural communities (and, indeed, small regional communities) some survivors spoke of the difficulties involved in reporting their abuse to police when their abuser had a friendly relationship with officers. Kelly, Teresa and Cassie, for instance, spoke of feeling as though their allegations

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<sup>152</sup> Survivor 11.

<sup>153</sup> See 159-65.

<sup>154</sup> Survivor 5, 22.

<sup>155</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 24.

<sup>156</sup> *Ibid*, see for instance: 9-10, 37, 45.

were minimised and discounted by officers who knew their partners socially.<sup>157</sup> Kelly described being told to cater to her abuser, perceived to be ‘a pillar of society’ – she was advised to ‘go home and cook a nice meal, his favourite meal, and everything will be okay’.<sup>158</sup> Another survivor who made a family violence complaint to police about a man ‘known to police through his sporting activity’ was told that she was ‘making it up and that he was a good guy who wouldn’t do that’.<sup>159</sup> In some instances survivors were encouraged to stay with their abusers. Teresa commented that when she called the police they did not suggest she pursue an FVIO but ‘said, “He won’t touch you, so you stay here, it will be alright”’.<sup>160</sup> Men sometimes used their rapport with officers in an attempt to intimidate survivors. After Rohini reported to police that her partner had breached the FVIO, she received messages from him saying, ‘I know the police officer, he knows your family and he thinks you’re a joke and this whole case is a joke’.<sup>161</sup> Workers also attested to such problems in police responses in cases where officers knew women’s partners, and suggested that ‘it might not be a problem of the individual officer but more the culture in the police station’ that is ‘entrenched’ because ‘police don’t move around so much’.<sup>162</sup>

Some survivors and workers argued that men are often able to manipulate police officers. ‘The man can be composed’ when police arrive on the scene, ‘[h]e knows how to be manipulative, that is what family violence is about’, workers explained, ‘when they are abusers they know how to manipulate’.<sup>163</sup> Women who were emotionally distressed when speaking with officers were, on occasion, regarded as unstable. Chloe recounted how ‘he [her abuser] rang police and said, “she is crazy” ... he lied. He said the violence didn’t happen. He said I caused the fight, that I had an “episode”’; ‘a lot of the time I came across as frantic so they wouldn’t help. They thought I was out of control’.<sup>164</sup> In such circumstances, men are sometimes successful in persuading police to issue cross-applications,<sup>165</sup> which could impact ‘the ability of women to recover and access services and facilities [pertaining to family violence]’.<sup>166</sup> One problem, a worker explained, was that officers do not always understand:

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<sup>157</sup> Survivor 20, 28, 23.

<sup>158</sup> Survivor 20.

<sup>159</sup> Advocate 26.

<sup>160</sup> Survivor 23.

<sup>161</sup> Survivor 13.

<sup>162</sup> Advocate 25, Advocate 26.

<sup>163</sup> Advocate s 28.

<sup>164</sup> Survivor 21.

<sup>165</sup> See glossary, 187.

<sup>166</sup> Advocates 28, Survivor 21.

the difference between committing violence and resisting violence actively. They are not spending enough time when they are called out... They are not looking at the whole situation.<sup>167</sup>

However, it is worth noting that the *Code of Practice* does recommend that '[o]nly one primary aggressor should be identified' and stipulates that officers should 'not make cross-applications for intervention orders'.<sup>168</sup> Furthermore, many workers have suggested that officers are better equipped to read situations, locate the primary aggressor and support survivors than they were in the past. Nonetheless, there have been occasions when police have not appreciated the ways abusers can seek to control survivors or the pressures survivors are under. When Chloe, for instance, recanted her statement about the abuse she had suffered, under pressure from her abuser, she was charged with perjury.<sup>169</sup>

## ***The court setting***

### **Court building design**

Historically, the cases that have come before magistrates' courts have predominantly been criminal matters. In these matters, the safety of witnesses is the responsibility of the police and the relationship between victims and offenders is rarely interpersonal. Many criminal cases in the lower courts proceed by way of a guilty plea so that victims and witnesses often do not need to attend court. Moreover, in contrast to family violence matters, the majority of criminal matters in the lower courts do not involve offences of violence.<sup>170</sup> In family violence matters victims and witnesses frequently attend court and so are at risk of intimidation and violence, both inside and outside the court. Indeed, engaging in the court process may be the only opportunity for the respondent to be in the vicinity of the woman and/or children involved, without breaching a court order. This presents a potentially volatile scenario.

The Victorian Department of Justice (DOJ) has responsibility for court buildings. Court resources across Victoria are in rapid decline and many country courts are 'no longer fit for purpose as the size and demography of communities outpaces justice reinvestment'. This, the Victorian Law

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<sup>167</sup> Advocate 27.

<sup>168</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 17.

<sup>169</sup> Survivor 21.

<sup>170</sup> Magistrates' Court of Victoria, *Annual Report 2012-2013* (Magistrates' Court of Victoria, 2013), 82

Institute believes, will increasingly curtail access to justice<sup>171</sup>, although in the past year the government has announced a refurbishment of Shepparton Court and a new courtroom at Bendigo.<sup>172</sup>

DOJ carries out Court Service Demand Assessments in relation to the construction of new facilities. The Auditor-General has indicated that the issue of 'demand' is largely demographic rather than considering the changing work of those courts.<sup>173</sup> DOJ has prepared a Courtroom Design Guide<sup>174</sup> which explores the value of constructing new courts rather than retrofitting old ones, to reflect the changing nature of court work. However, it is unclear whether the problematic issue of the presence of children at court in family violence matters, discussed below, has been addressed in the Guide.

Discussing consultations on court development that have occurred in her region, one family violence worker recalled the emphasis her service had placed on the need to provide a waiting room for women and their children; and a place for children to play where contact with the respondent, their father, can be avoided. Yet no such space was created at their new regional court, and the worker expressed the view that DOJ's position is 'that women attending their courts shouldn't have pesky children [at court]'.<sup>175</sup> However, this attitude does not acknowledge the difficulties single parents face in accessing childcare, or the significant amount of time women typically spend at court waiting for their matter to be heard. 'Sometimes women have no alternative' but to bring their children to court, and the lack of facilities 'can be a barrier to a woman seeking an FVIO in the first place'.<sup>176</sup>

### **The lead-up to court: front desk privacy**

Although police initiate the vast majority of FVIOs, many women make their own applications at court, and some of these women have not previously engaged with family violence services and

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<sup>171</sup> Law institute of Victoria, 'Cashed Up Prisons but no Money for Legal Aid' (Media Release, 7 May 2014) <http://www.liv.asn.au/Practice-Resources/News-Centre/Media-Releases/Cashed-up-prisons-but-no-money-for-Legal-Aid>.

<sup>172</sup> Victorian Department of Justice, 'Planning Approval for Bendigo Justice Service Centre and Court' (Media Release, 26 November 2013) <http://www.justice.vic.gov.au/utility/media+releases/planning+approval+for+bendigo+justice+service+centre+and+court>; Premier of Victoria, 'New Court Complex for Shepparton' (Media Release, 1 May 2014) <http://www.premier.vic.gov.au/media-centre/media-releases/9788-new-court-complex-for-shepparton.html>.

<sup>173</sup> Victorian Auditor-General, *Construction of Police Stations and Court Houses* (Victorian Government Printer, 2011) 8.

<sup>174</sup> This is not publicly available.

<sup>175</sup> Advocate 40.

<sup>176</sup> Ibid.

so may have no knowledge of what is required. Regardless of the court, the front desk is always located in a public area and many women in this research described issues arising from having to tell their story in such a public space. In this regard, some women explained that they did not want to go into detail about the violence they had experienced, in case others might hear. Additionally, as previous research has identified, in rural and smaller regional areas, where women are more likely to be known to court staff and visitors, the assurance of privacy and confidentiality is tenuous at best. As Bella explained:

There could be six people behind you and because it's a small town two people behind you might know him. So you water it down, because there's people behind you listening.<sup>177</sup>

Fear of their abuse becoming public knowledge can lead women to minimise the violence they experience, which can have implications for their appearance in court. For example, in 'water[ing] it [their abuse] down', women may not include enough evidence as to why they need an order, or demonstrate why their children should be covered, why an exclusion order is necessary or why they believe that the abusive behaviour is likely to continue.<sup>178</sup> The women in this study who experienced non-physical abuse also found it difficult to 'prove fear in one paragraph, if there hasn't been a bruise but emotional violence for years'.<sup>179</sup> It is, women and workers argued, difficult to have the impacts and legacies of non-physical abuse recognised; one worker explained that 'women say to me I wish I had a black eye'.<sup>180</sup> In relation to this, workers emphasised the importance of providing private spaces in court buildings:

It is vital that all courts have a dedicated room for registrars to have initial discussions with women about FVIO applications.<sup>181</sup>

### **Front desk experiences: registrars**

*'We need registrars with some compassion and understanding.'*<sup>182</sup>

The front desk registrar may be the first stranger with whom women speak about the violence, so the attitude of the registrar can have a significant impact on women's experiences of seeking

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<sup>177</sup> Survivor 18.

<sup>178</sup> Ibid.

<sup>179</sup> Advocates 34.

<sup>180</sup> Advocate 29.

<sup>181</sup> Advocates 34.

<sup>182</sup> Survivor 25.

assistance. 'It's the person on the counter on the day that makes a difference', one worker explained.<sup>183</sup> For Josie:

It's about whether they show respect. Sometimes it feels like they're looking down on you and judging you, speaking to you like it's your fault. A good speaking tone makes a difference.<sup>184</sup>

Survivors and workers spoke about both positive and negative experiences with registrars; of greatest concern is that their experiences were so polarised. A key issue is that their encounter with the registrar can shape women's subsequent experiences of court, particularly if the registrar is the first stranger with whom they discuss their abuse.

Survivors appreciated the efforts of registrars to make them feel at ease and to meet their needs. Sunny, a CALD survivor, said, 'the registrar made me feel comfortable'. Consequently, she did not feel as though she needed an interpreter when talking to the registrar, 'because it is comfortable ... only in court when it is a hostile environment did I need an interpreter'.<sup>185</sup> Cassie recalled that '[t]he court staff were very nice at the desk. They asked me if I needed tissues or a pen'.<sup>186</sup>

The profound impact registrars can have on a survivor's experience of court is perhaps best illustrated by Cassie's account. After having had negative experiences with registrars in a regional court, she travelled to a specialist family violence court in the city where she found 'the registrars were much more pleasant to deal with'.<sup>187</sup> As the researchers noted earlier, with the exception of Ballarat, there are no specialist family violence courts or divisions in regional, rural or remote Victoria.

Whether or not the courts they visited were specialist, survivors were grateful when registrars recognised the sensitive nature of the matter. Josie, for example, 'was taken to a private space and given great support'.<sup>188</sup> Survivors and workers agreed that it is vital that women be given a private space in which to talk about their application and adequate time to complete the application form. Bella wondered 'how mentally ill women cope.... There's always so much pressure to get it done quickly, they need to slow it down'.<sup>189</sup> Survivors appreciated registrars

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<sup>183</sup> Advocate 27.

<sup>184</sup> Survivor 7

<sup>185</sup> Survivor 24.

<sup>186</sup> Survivor 28 .

<sup>187</sup> Ibid .

<sup>188</sup> Survivor 7.

<sup>189</sup> Survivor 18.

asking women whether they wanted assistance from an agency to complete the FVIO form, and making referrals to family violence services or CLCs as needed. Speaking to the importance of these responses, Alita credited her connection with a family violence service to the registrar she met. He asked whether he could provide a service with her number, and '[i]t was great, they rang me', she recalled, 'I probably wouldn't have gone to them [otherwise]'.<sup>190</sup>

In Warrnambool a protocol is in place between the court and Emma House Domestic Violence Service such that if a woman attends the court to request an FVIO the registrar asks her whether she would like support and whether she would be happy to receive a phone call in the following week from the agency. Workers reported that:

We get a very positive response from women with this approach. Most are really appreciative [of] getting our call. It also allows us to contact women who we may have been working with but who have gone back to their partners and disengaged and may feel a bit ashamed about coming back to us and court again.<sup>191</sup>

Overall, there is inconsistency in the manner in which registrars process the applications of women seeking FVIOs. Survivors noted that registrars' behaviour and encounter with survivors might depend on 'whether they are busy or not'.<sup>192</sup> ATSI support workers reported that if registrars are busy they could be dismissive; 'the registrar will say they are very busy and tell them to come back later'.<sup>193</sup>

Whereas some survivors found registrars to be supportive, others found them to be 'pretty clinical'.<sup>194</sup> A former court worker suggested that the age of some registrars might hinder their responses:

many registrars are twenty-one and twenty-two ... what life experience have a lot of them had? ... it's humiliating talking about such personal stuff to a twenty-one year old.<sup>195</sup>

Another lawyer identified issues with older registrars; one registrar in particular was described as:

terrible, judgmental, free with his opinions of how things should go, giving gratuitous advice, socially conservative, old school, resistant, bogged down with his own rules of how

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<sup>190</sup> Survivor 19.

<sup>191</sup> Advocates 37.

<sup>192</sup> Survivor 18.

<sup>193</sup> Advocates 28.

<sup>194</sup> Survivor 18.

<sup>195</sup> Advocate 29.

things should be done, punitive and with a low opinion of young people.<sup>196</sup>

Some survivors and workers questioned the competency of registrars. Bella, for instance, ‘had registrars muddle up everything ... and get it wrong, which makes it [one’s case] weaker and harder [to be successful] in front of the magistrate’.<sup>197</sup> ATSI support services workers described how ‘some of the staff at the court had difficulty in understanding how to handle applications’; for example, ‘[t]hey put women in stalking applications<sup>198</sup>, [and] they don’t understand our family relationships’.<sup>199</sup> Registrars themselves cannot give women advice about completing application forms, but unless women have seen a service prior to attending the court, they will often ask registrars for advice to help them complete the detailed, twelve-page document. In any event, registrars are not the best placed to advise women because they are registrars, not lawyers or family violence workers.

Survivors described the process of completing FVIO forms as intimidating and confusing, particularly when they did not have assistance or support. One lawyer noted that women are ‘given a clipboard and told to go away and fill in the squares’.<sup>200</sup> If the registrar does not inform the woman about what information is necessary to obtain an order, it is likely it could be unsuccessful. ‘It really depends on whether the registrar is any assistance in letting her [the applicant] know what information the court requires to get an order’, the lawyer explained.<sup>201</sup> Registrars sometimes ask Court Network volunteers to help a woman complete the form ‘if she can’t write’. However, in this regard ATSI support workers claimed that ‘often enough our women will just walk away with the form and might not come back’.<sup>202</sup>

Workers were adamant that registrars should as a matter of standard practice offer referrals to family violence services and CLCs who, they believed, are more inclined to provide links to support services than are other legal providers. While workers from some agencies reported that they often receive a call from court staff to come to the court to help a woman there and then, some legal centre workers commented that ‘we don’t get referrals from court’<sup>203</sup>. To ensure that

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<sup>196</sup> Advocate 26.

<sup>197</sup> Survivor 18.

<sup>198</sup> Section 8 of the Family Violence Protection Act recognises that extended family is a family relationship that can be protected by an FVIO. This quote is indicating that police are not recognising that extended (ATSI) family relationships are covered by the act and instead are using stalking legislation.

<sup>199</sup> Advocates 28.

<sup>200</sup> Advocate 27.

<sup>201</sup> Ibid.

<sup>202</sup> Advocates 28.

<sup>203</sup> Advocate 27.

applicants receive legal advice before completing FVIOs and that the forms are filled out thoroughly in the first instance, CLCs could be funded to run a legal clinic one day a week at the court, to be advertised through family violence services and community agencies. ATSI support workers stressed that it is vital that ATSI women be given referrals to culturally appropriate family violence or legal services because of the multiplicity of issues that they and their children often face. Additionally, workers noted that women are more likely to disclose information necessary for their application to such services than to registrars.

The researchers asked respondents whether a dedicated family violence registrar would be beneficial. One of the lawyers explained that some courts do have such registrars, yet remarked that this role can be challenging and unpopular:

[One] dedicated family violence registrar, he is very senior but he hates doing family violence [work]. He resents it although he is good at it ... I am sure if you are doing it day in and day out, it would have a grating effect on you. You would just have enough of it.<sup>204</sup>

Instead of a dedicated family violence registrar, this lawyer proposed that family violence training be extended because '[it] is a big part of core business'.<sup>205</sup>

Registrars receive family violence training through DOJ. However, some workers reported that, additionally, they had attempted to have registrars attend Family Violence Network Meetings and CRAF training. One worker argued that registrars need to participate in, not merely attend, training, recalling that 'we [the service] did do a CRAF training for registrars and one was sleeping'.<sup>206</sup> Workers expressed the desire for registrars to recognise the value of the workers services because:

services do [work] outside court [that] assists the work of registrars. The registrar comes from a justice perspective, it's a sausage factory to get people through, they don't have a community welfare background.<sup>207</sup>

One worker found 'one-on-one training' to be more effective, whereby 'they come and work with us for a day', giving them a perspective on the roles and responsibilities of workers.<sup>208</sup>

As gatekeepers of the court, registrars hold a lot of power. However, the patchy experience that

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> Advocate 29.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

both workers and women had with registrars has rarely been brought to the attention of anyone in authority. Workers said that it is difficult to make complaints about registrars, particularly in small towns, without risking retribution in the form of less-than-professional service thereafter. 'It is very tricky bringing things up with them', one worker noted:

They can be a bit of a club so if you offend one you offend all. You have to go very softly, softly in how you approach it. Writing a letter would be the worst idea.<sup>209</sup>

Some services that attended court stakeholder meetings<sup>210</sup> suggested that these were not forums in which to raise complaints about registrars because they can be very defensive. The stakeholder meetings were steered towards court housekeeping issues rather than considering the practices and behaviours of court personnel.

### **The court event: a place of risk for survivors and their children**

*'Most people in court are nervous, petrified or angry enough to kill.'*<sup>211</sup>

*'I never go to court by myself.'*<sup>212</sup>

*'[H]e hangs around waiting no matter how early I get there.'*<sup>213</sup>

All stages in FVIO court proceedings create safety issues; indeed, the period of separation is the time of greatest risk of further and increased violence and possibly homicide.<sup>214</sup> People supporting survivors are also vulnerable. Helen, for instance, recalled that 'when my sister went out for a cigarette he [her abuser] went out and cornered her'.<sup>215</sup> Even in the courtroom women can be unsafe. When Samantha was in court seeking an indefinite intervention order because of escalating violence and threats to kill:

he [her abuser] made a gesture that he was going to slit my throat if I talked any more. Dad was a witness to it, and my daughter was just in shock. She said, 'Mum don't look at

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<sup>209</sup> Advocate 40.

<sup>210</sup> Also referred to as court user meetings. These meetings are convened by the court and typically involve community organisations and CLCs that deliver services to court users and may include police prosecutors. The frequency at which these meetings occur depends on the individual court.

<sup>211</sup> Magistrate 1.

<sup>212</sup> Survivor 4.

<sup>213</sup> Survivor 19.

<sup>214</sup> Debbie Kirkwood, 'Just Say Goodbye': Parents Who Kill Their Children in the Context of Separation, *Discussion Paper no.8* (Domestic Violence Resource Centre Victoria, 2012) 8; Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 26.

<sup>215</sup> Survivor 4.

him' ,she just couldn't handle it, she went. I just shook the whole time I was there. I wanted to go, I wanted to leave straight away.<sup>216</sup>

Although there are relatively new regional court buildings in the four regions covered in this research, none were considered safe by family violence applicants or workers from services coming before the courts. Older court buildings in Swan Hill, Robinvale, Sale, Bairnsdale and Portland were also perceived as unsafe because of the small size of their waiting rooms.

Additionally, facilities are inadequate. Visitors to the court typically wait outside, regardless of the temperature, and there is no security although 'there are often fights happening between the parties'.<sup>217</sup> Workers noted that 'at [one court] the front door of the court [building] has been smashed three times by fights in and around it'.<sup>218</sup> The size of waiting areas means that applicants and respondents are more likely to wait outside the building and so are more visible to any community members walking past the court.

Many women fear going to court because of the presence of the defendant and his network of family and friends. Workers suggested that '[i]f the respondent is from a large family in a particular community' it is not unusual for 'en masse support' to feature at court, which 'can feel intimidating for the applicant'.<sup>219</sup> In older courts women are likely to be in close proximity to the respondent and his supporters when waiting for their matter to be heard. At Robinvale Court, for instance, there is a very small foyer with only eight seats, so applicants and respondents must either wait in the same space or on the lawn. At Swan Hill 'you are either facing your ex on a bench or are back to back on benches. There is no escape', workers explained.<sup>220</sup> The women in this research were anxious when they saw their abuser. Helen was 'lucky enough to find a little corridor where the Salvation Army people are ... a safe little spot'; however, as she noted, 'I was still cornered'.<sup>221</sup> Another survivor recounted:

I have been there twice. I was there by myself the first time and walked past him. I was beside myself. The second time, I hid in the bathroom at court and texted my lawyer.<sup>222</sup>

Thus, for many survivors the wait before their matter is heard, the journey into the courtroom,

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<sup>216</sup> Survivor 11.

<sup>217</sup> Advocates 34.

<sup>218</sup> Advocate 25.

<sup>219</sup> Advocate 35.

<sup>220</sup> Advocates 28.

<sup>221</sup> Survivor 4.

<sup>222</sup> Survivor 19.

the courtroom itself and leaving the court are all associated with fear. One worker described seeing women 'have anxiety attacks and epileptic fits because of the stress'.<sup>223</sup> Magistrates have acknowledged that the burgeoning number of FVIO applications is problematic because people must wait for longer periods at court, which can exacerbate safety concerns. The majority of women and support workers in this research spoke of the need for separate entrances and exits at courts. Yet all but one of the courts observed in this study has a single entrance and even this led straight into a shared waiting area.

There are few if any spaces for workers to meet with clients at the older courts. Workers recounted how they 'interview clients on the grass outside'<sup>224</sup> or 'in the lawyer's car outside court, [and] at times they have used empty police cells'.<sup>225</sup> However, the newer regional courts do have room for services such as Legal Aid, prosecutors, the Court Network, the Salvation Army and lawyer interview rooms. At some courts, services can access 'safe' rooms for women which have no windows, or where doors can only be opened from the inside or with a key. These rooms allow for much safer experiences for women. Over fifteen years ago, Broadmeadows Court created a specialist 'protected persons space' at the behest of the CLC and with support of the coordinating magistrate.<sup>226</sup> Applicants can enter these areas after attending at the registrar and being given a coloured entry slip. These 'safe spaces' contain toys for children, tea-making facilities and a toilet, and provide outside vision so that applicants can see when respondents have left. Paradoxically, this 'confinement of women' in 'safe rooms' to secure their safety replicates the 'confinement' that many women experience in the family home with their socially controlling partners. One worker proposed that there be:

a dedicated room for the perpetrators of the violence so that they were contained within the court building and not the victims of their assault having to be shielded from them in a public place.<sup>227</sup>

### **Fear of giving evidence, shame and public exposure**

*'You can hear the names from the court loud speaker in the supermarket across the road.'*<sup>228</sup>

*'The cattle call at court is difficult. You can be in line waiting and there might be perpetrators*

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<sup>223</sup> Advocate 29.

<sup>224</sup> Advocates 28.

<sup>225</sup> Advocate 25.

<sup>226</sup> Ringwood Court have also recently created such a space. See glossary, 189.

<sup>227</sup> Advocate 40.

<sup>228</sup> Advocate 29.

*standing behind you wanting to register with the court and he has to sign in, and his mates are there, your name comes over the speaker ... everyone is looking.*<sup>229</sup>

Courts have been described as theatres of the people, and it is the public nature of the storytelling that occurs in court that represents one of the greatest challenges for women survivors of family violence. The private nature of family violence is completely at odds with having to tell the world about it, in open court. As Dawn explained:

The public thing in court is too hard because you feel ashamed. You keep it hidden for years and then going from that to going public is hard.<sup>230</sup>

On this issue workers commented that:

Women take the difficult step of going to court but they don't want the community to know and they want to protect their kids from other people knowing.<sup>231</sup>

While shame and fear are feelings that many women in cities experience when taking a family violence matter to court, in smaller communities such feelings can prevent women making the decision to seek protection and safety from the court. The relative anonymity of city courts is not available to rural and regional women. As Giddings, Hook and Neilson observe, 'court appearances can be more traumatic as "half of [the town] is up the back, ears strained and listening to you go to pieces"'.<sup>232</sup> As a consequence, many women are anxious about giving evidence and so, as one lawyer explained, 'not all magistrates make applicants do it [give evidence] but often you have to do it in front of the perpetrator'. Applicants therefore have to weigh up how much they want the order against how afraid they are of giving evidence.<sup>233</sup>

### **The (under)use and limitations of onsite, court-based video-link technology**

Many women prefer not to give evidence in the physical proximity of the respondent. The Family Violence Protection Act stipulates that the defendant may not personally cross-examine the aggrieved family member, which provides a level of protection for applicants from direct

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<sup>229</sup> Advocate 24.

<sup>230</sup> Survivor 29.

<sup>231</sup> Advocate 35.

<sup>232</sup> Jeff Giddings, Barbara Hook and Jennifer Nielsen, 'Legal Services in Rural Communities: Issues for Clients and Lawyers,' (2001) 26:2 *Alternative Law Journal* 57-63, 59, citing Jennifer Nielsen, *Gender Bias in the Civil Litigation System and its Impact on Women as Civil Litigants in NSW; Northern Rivers Region* (Southern Cross University, 1995) 32.

<sup>233</sup> Advocate 31.

engagement with their abuser.<sup>234</sup> However, some respondents use the fact that they have not obtained legal representation (as required by the Act in order to cross-examine) to adjourn and string out proceedings, and thereby continue seeing the woman and controlling her life through these additional court appearances.

The use of court-based video-link facilities can reduce the fear and distress experienced by being in the physical presence of the defendant. However, lawyers and workers said that even in newer courts this technology is infrequently used. One worker had 'never seen the remote witness room in the [Mildura] court used'.<sup>235</sup> A lawyer at the same court believed that it is used in cases where there is a teenage witness or the applicant has a disability. Most survivors indicated that they would appreciate using court based video-link facilities, particularly if respondents are asked to remain in the court for some time after the hearing is completed.

Dawn, for example, commented that:

retelling the story in court is really hard. The public stuff in court is really hard. Video-link would be good, but it was never offered.<sup>236</sup>

Although the use of court-based video-link technology can serve to make some women feel safer, the issue remains that women still have to go through the same front entrance and wait in the same area as the respondent. Kelly's lawyer suggested that she give evidence via video-link 'because he [the defendant] uses court to see me', but she noted that that would not necessarily prevent contact because 'I still see him at the counter'.<sup>237</sup> In this vein, a woman whose partner had tried to kill her said:

I wouldn't feel safe with video-link either ... I get escorted from the court by police. Even though he is not on bail, I am just really frightened.<sup>238</sup>

The development of the Bendigo Justice Centre includes a remote witness room.<sup>239</sup> Offsite remote witness rooms that utilise video-link technology are discussed later in the section on children and in the recommendations. They have the potential to address many of the safety concerns associated with applicants and respondents being in the same space at court and the problems

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<sup>234</sup> Family Violence Protection Act, section 70.

<sup>235</sup> Advocates 28.

<sup>236</sup> Survivor 29.

<sup>237</sup> Survivor 20.

<sup>238</sup> Survivor 15.

<sup>239</sup> Victorian Department of Justice, 'Planning Approval for Bendigo Justice Service Centre and Court', above n 63, part 4.

created by children attending court.

### **Leaving court**

*'After the intervention order was dismissed I was terrified.'*<sup>240</sup>

Leaving court after a hearing can be an intimidating and dangerous time for women applicants, regardless of whether they have an order. Perpetrators may use their network of family or friends to intimidate or attack survivors. Workers recounted the case of one client whose abuser:

had organised women from her cultural community to attend the court and then follow her out and they started to assault her outside.<sup>241</sup>

The dangers women face are evidenced in the recent killing in a main street of a woman by her partner in front of her teenage son after she left an FVIO hearing at Sunshine Magistrates' Court.<sup>242</sup> In an effort to avoid the possibility of contact between survivors and respondents, some magistrates request that one party wait while the other leaves the court. In this regard, workers suggested that magistrates be given the power to mandate that after a case has concluded respondents wait until the applicant has left the court building. On occasions when a respondent is obviously angry, magistrates sometimes ask police to escort women out. While the researchers heard of some private security officers escorting women out of court, more frequently we were told of security officers who refused or were not permitted to do so under their contract. At other times FVLOs offer to escort women or support services workers them, on their behalf.

Lawyers also suggested that as a matter of standard practice registrars should be required to give applicants the paperwork associated with their FVIO first after the court hearing, (unless there are clear safety concerns requiring the respondent to leave immediately) to give women adequate time to leave the area, and only then give respondents their paperwork.

For survivors who live out of town in rural areas, leaving court and getting into a car to travel on country roads can be frightening. One woman described how police escorted her car for the entire drive home to her property. Other women spoke of their partners knowing the mobile phone drop-out spots and that this made the drive home particularly frightening.

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<sup>240</sup> Survivor 21.

<sup>241</sup> Advocates 34.

<sup>242</sup> Nick Toscano and Jane Lee, 'Woman Stabbed as Son Watches,' *The Age* (Melbourne) 17 April 2014.

## Children at court

The Family Violence Protection Act states that children should not generally be present in court to protect them from exposure to the court system and because of possible harms to them and their family relationships.<sup>243</sup> However, family violence cases now form such a substantial proportion of the case list that children are more likely to be in the court space. There is an urgent need to address the issue of children coming to court in intervention order matters, both to shield them from any further exposure to harm through hearing about family violence and to ensure that women are able to get the best outcomes from their applications. None of the courts the researchers visited have dedicated areas for children. Children were seen to be sitting in or running around waiting areas, sometimes playing with toys brought by volunteers such as the Court Network and Salvation Army. Moreover, the presence of children can distract from court proceedings. On one occasion, the researchers witnessed a small child playing noisy games on a computer throughout his parents' hearing.

Family violence court listing times are not staggered and so applicants and respondents have to arrive before 10am yet may not leave until the end of the day at 4pm. Some women do not wish to be separated from their children, particularly if the children have experienced family violence and/or there has been intergenerational trauma involving separation from children.<sup>244</sup> However, the majority of survivors in this research said that they would have preferred not to take their children to court, but that an array of factors prevented this. There are limited numbers of occasional childcare places in regional and rural Victoria and, in any event, occasional care is expensive for women who are on fixed incomes. Most occasional childcare centres require that the child stay for a minimum number of hours. And unless a child is familiar with the childcare centre, placing them into care can be stressful for both mother and child, which compounds the anxiety associated with the court visit.

It can also be difficult for women to access informal childcare. Women who have left the family home and relocated may not have anyone they or their children know or trust to look after them. Childcare becomes a greater problem the more times women have to go to court because there are more occasions when women need it. As workers discussed, in the lead-up to court

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<sup>243</sup> Family Violence Protection Act, section 150 (3) notes that the court can permit children in court by weighing up (a) the desirability of protecting children from unnecessary exposure to the court system; and (b) the harm that could occur to the child and family relationships if the child is present while the court is conducting the proceeding.

<sup>244</sup> See glossary, 188.

appearances, women who have left relationships may already have relied:

heavily on their support networks and feel that they are taxed and find it hard to keep asking for babysitting help.<sup>245</sup>

The pressure to collect children from formal or informal childcare within a certain timeframe can result in women consenting to undertakings and orders ‘that they would not otherwise have done’.<sup>246</sup> As one lawyer explained, women ‘perhaps get less than what they would if they had run it as a defended matter’ because the evidence is not fully considered by the court.<sup>247</sup> At court, women must deal with their children’s boredom and hunger. Some courts have no vending machines, and those that do sometimes only offer drinks. As workers explained, women who do not realise that they are required to stay at court for many hours do not bring enough food for their children, and some have no money to purchase food. One worker said that it would be preferable for support workers to attend court with women applicants ‘as they [the women] can be so nervous that it is difficult for them to know what has happened’. However, when women have their children with them, workers often ‘have to wait outside with the kids’.<sup>248</sup>

### **First ‘contact’**

At court, children may be seeing the respondent parent for the first time since a family violence incident, so the court waiting area becomes an informal ‘contact’ space. In essence women can be ‘forced’ into a contact situation that has not been negotiated or to which they have not consented, which can result in the family law issues taking precedence in everyone’s mind.

The researchers witnessed many interactions where small children were running between applicants and respondents in the court waiting area. This situation is stressful for the applicant as many women said that the respondent ‘behaved’ himself in the public space<sup>249</sup> of court, which can undermine her confidence in seeking protection from (his private) violence to herself and the children. This contradictory behaviour can also be confusing for children, particularly if they then go into the courtroom, where they are exposed to more talk about the violence in the home environment.

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<sup>245</sup> Advocate 31.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Advocate 33.

<sup>249</sup> Viveka Enander, ‘Jekyll and Hyde or “Who is this Guy?”: Battered Women's Interpretations of their Abusive Partners as a Mirror of Opposite Discourses,’ (2010) 33:2 *Women’s Studies International Forum* 81-90.

The high level of capital expenditure needed to build new courts or remodel old ones (which are often heritage listed) may not be the best means of ensuring court safety for women in family violence matters. Even if there are separate entrances and waiting areas at courts, there is still the likelihood of contact with the respondent both before and after the case, as well as having to be in the presence and during the hearing.

The use of offsite remote witness facilities located within the community (for instance, at police stations, family violence services and legal services) would resolve the issue of the fear before, during and after the hearing and protect children from being exposed to court and hearing about violence. Additionally, women might feel more comfortable giving evidence in these settings. For women in rural areas where courts are very small and visibility in the community high, offsite remote facilities could be of particular benefit.<sup>250</sup> The cost of the new technology required for such facilities would be low, although courts would need to have compatible technology and provide staff at the offsite facility for the set-up and the duration of the hearing.<sup>251</sup> In larger regional centres, Legal Aid and larger private law firms already have remote video facilities that might be utilised. If remote witness facilities were located in a place where women felt comfortable and familiar, such as a family violence or legal service, it would be more likely that they would provide better evidence. This method of giving evidence is successful in sexual assault prosecutions and can sidestep the problems associated with the restrictions on renovating heritage court buildings and capital cost constraints.

## **Magistrates**

There are 116 magistrates in Victoria<sup>252</sup> and, as previously noted, a great swathe of their work involves family violence. In recent years magistrates' training has considered the social context, nature and impacts of family violence. However, although there are specialist family violence courts and divisions, the majority of FVIO applicants see a magistrate whose specialist focus is not family violence.

Visits to regional and local courts gave the researchers an opportunity to observe magistrates who

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<sup>250</sup> The new Bendigo justice centre has a remote video room Victorian Department of Justice, 'Planning Approval for Bendigo Justice Service Centre and Court' above n 63, part 4.

<sup>251</sup> Emma Rowden et al., *Gateways to Justice: Design and Operational Guidelines for Remote Participation in Court Proceedings* (University of Western Sydney, 2013); Anne Wallace, 'Virtual Justice in the Bush: The Use of Court Technology in Remote and Regional Australia' (2008) 19 *Journal of Law, Information and Science* 1-21, see 1.

<sup>252</sup> See Magistrates' Court of Victoria, *Annual Report 2013-2014* (Magistrates' Court of Victoria, 2014) 1, which (at the time of printing) notes there are 114 magistrates.

were often presiding over lengthy FVIO court lists; there could be up to 70 intervention orders listed. Discussing this heavy workload, one family violence worker remarked that:

in an ideal world they would have twenty-five [FV]IOs before them, not sixty-eight, because magistrates should know what's really happening in each family so that effectively they can case manage from the bench.<sup>253</sup>

Magistrates no doubt have a variety of views about the appropriateness of a case management approach, but regardless of their judicial approach, a magistrate's attitude and demeanour towards the parties in a case has a significant impact on women's experiences of court. In this study, magistrates expressed a variety of views on what conditions in orders would and wouldn't generally be made. A number of workers said it is important to know which magistrate is sitting on the day, in order to anticipate what orders would likely be handed down.

The vast majority of magistrates dealt with the parties thoughtfully and respectfully, although some women said that they felt bullied by magistrates, and the researcher did witness such behaviour. In interviewing women, family violence workers and lawyers, the researchers heard of magistrates who were respectful and receptive; however, we also heard of magistrates behaving inappropriately and unprofessionally. One worker noted that 'if a woman has a bad experience in the court, she is not going to rush to go back and she is going to tell others'.<sup>254</sup>

Even if a woman's experience of other people or parts of the system is less than positive, speaking before and being heard by a magistrate can be empowering. Even though Mila 'felt awful' and 'was scared' about going to court, when speaking to the magistrate she 'felt confident and the magistrate listened.... I felt validated by the magistrate'.<sup>255</sup> For respondents, the court process itself and the attitude of the magistrate can bring home the gravity of the situation and the community disapprobation and consequences of family violence that the magistrate is tasked with applying.

### **New legislation: diminishing the important voice of magistrates**

The Family Violence Protection Act requires that at the end of a hearing, if making a final order, the magistrate must explain the conditions in the FVIO to both parties.<sup>256</sup> This allows for the magistrate to hold the perpetrator to account, and to outline the impact of violence on the

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<sup>253</sup> Advocate 29.

<sup>254</sup> Advocate 35.

<sup>255</sup> Survivor 26.

<sup>256</sup> Family Violence Protection Act, section 96.

women and children and the conditions of FVIOs as well as penalties for breaches.<sup>257</sup> According to the Federation of Community Legal Centres Victoria this opportunity to hear consistent messages directly from magistrates about the seriousness and unacceptability of family violence ‘can have a significant impact on both the affected family member and the perpetrator’.<sup>258</sup>

However, the government has recently passed amendments to the Family Violence Protection Act to introduce ‘self-executing orders’<sup>259</sup> which reduce the role of magistrates and, in so doing, diminish the opportunities for their actual and representative voice. The amendments provide that if an applicant ‘consents’ at the interim intervention order stage (when most women do not have legal representation), a final order can be made that automatically takes effect twenty-eight days after the respondent is served, without the need for the respondent to appear before a magistrate. The risks inherent in self-executing orders were the subject of a joint submission by nine non-government organisations.<sup>260</sup> As workers noted in this research, such an initiative might mean that opportunities to monitor compliance, enhance consistency, educate perpetrators and ensure the implementation of sound risk assessment and risk management processes will be missed. One lawyer highlighted the importance of the magistrate and the dangers of reducing this role, commenting:

the authority and gravitas of the magistrate is very significant to some men and this is the problem with the new proposals ... you do not get this authority with a bit of paper served on you ... for some men it is very important that the magistrate speaks to them directly about the actual order ... self-executing orders will remove this and dilute the power of the order and feelings of safety for women. It is important that women see the man spoken to by the magistrate.<sup>261</sup>

Indeed, many of the women in this research underlined the importance of parties being in court with the magistrate. Even when women were disappointed with the outcome of their hearing, having their abuser witness a person with such authority denounce their actions had enormous value. As Mila explained:

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<sup>257</sup> Federation of Community Legal Centres et al., *NGO Alliance Response to Department of Justice re the Proposal to Streamline the Family Violence Intervention Order System* (Federation of Community Legal Centres et al., 2013).

<sup>258</sup> Ibid, 4.

<sup>259</sup> Family Violence Protection Act, section 56A. See glossary, 189.

<sup>260</sup> Federation of Community Legal Centres et al, *NGO Alliance Response to Department of Justice re the Proposal to Streamline the Family Violence Intervention Order System*, above n 148, part 4.

<sup>261</sup> Advocate 27.

before we got heard again, another case was up. A guy who was harassing his ex, sending her multiple text messages and stuff, he was making excuses. She had transcripts of every single message, photocopies of phone records. The judge didn't take any shit from the guy, didn't accept his excuses, ruled in favour of the woman, so for me that was important to see that. My ex sat through it, he saw that the judge wasn't going to take crap from anyone, and I think that was worthwhile. Even though in my case I didn't get what I wanted, I saw that the judge wasn't taking crap from other people. I hope that my ex therefore won't do that stuff with me because he knows damn well I'll take him to court.<sup>262</sup>

In practical terms a respondent who receives a self-executing order and ignores it, or decides not to challenge it, is less likely to take the order seriously. Indeed, the option for a respondent to not attend court at all sends the message that family violence is, in the words of some workers, akin to a 'parking ticket'.<sup>263</sup>

Now that the legislation has passed there needs to be a qualitative and quantitative evaluation of the effectiveness of self-executing orders and whether there is any impact on FVIO breach rates.

### **Magistrates: a diversity deficit**

In Victoria's magistrates' courts where family violence cases are heard, 43 per cent of magistrates are women. Although nationally women have been the majority of law graduates for over thirty years, their rise to judicial office has been extremely slow.<sup>264</sup> The number of female magistrates has increased, yet critics have questioned the overall diversity of the magistracy. As Harris, Jordan and Phillips discuss:

there is still debate as to whether the magistracy fully *represents* their community when CALD peoples and some religious groups continue to be underrepresented.<sup>265</sup>

The majority of magistrates are Anglo-Australian males.<sup>266</sup> Recent studies have indicated that less than 5 per cent of Victorian magistrates hail from 'migrant backgrounds or spoke a language other

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<sup>262</sup> Survivor 9.

<sup>263</sup> Advocates 28.

<sup>264</sup> Ruth McColl, 'Celebrating Women in the Judiciary 2014,' (Address to New South Wales Women Lawyers, Sydney, 27 February 2014).

<sup>265</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 169.

<sup>266</sup> Ibid. See also: Sharyn Roach Anleu and Kathy Mack, 'Gender, Judging and Job Satisfaction,' (2009) 17 *Feminist Legal Studies*, 79-99, 79-80; Hugh Dillon, 'The Law and Social Change – A Magistrate's Perspective,' (2005) 7:3 *The Judicial Review* 345-363, 353-354; John Willis, 'The Magistracy: The Undervalued Work-horse of the Court System' (2001) 18:1 *Law in Context* 129-161, 134.

than English'.<sup>267</sup> Indeed it has only been during the term of the current government that Victoria's first ATSI magistrate has been appointed, who is also a woman. But beyond this important and overdue appointment, the gender record for appointments by the current government is disappointing and inexplicable.<sup>268</sup> Of the twenty-one appointments it made to the magistrates' courts only four were women.<sup>269</sup> This is contrary to the current government's policy on appointments to government boards, statutory bodies and committees which has a 50 per cent target for the appointment of women, although researchers note that this policy does not include the judiciary.<sup>270</sup> This winding back of gender equity risks a return to judicial appointments that are 'male, stale and pale'<sup>271</sup>

One of the requirements for judicial appointment in Victoria is to be 'aware of and sensitive to the diversity of backgrounds and life experiences of court users'.<sup>272</sup> More important than just awareness and sensitivity, the actual 'inclusion of diverse experience, voices and attitudes becomes positively necessary for judicial legitimacy'.<sup>273</sup>

Addressing the disparity between those who sit on the bench and those who sit elsewhere in court is not only about a benefit obtained through the:

visibility of difference, important as that has been in breaking down stereotypes and conferring democratic legitimacy on the judiciary ... the life experiences of women and minorities are very different.<sup>274</sup>

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<sup>267</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3,169.

<sup>268</sup> Researchers reviewed government media releases, which indicated that under the previous state government 46 per cent of all judicial appointments were women. However, under the current government only 17 per cent of appointments have been women. On this see: Victorian Attorney-General Media Release Lists, available at: <http://www.premier.vic.gov.au/media-centre/media-releases/from-the-attorney-general.html> (viewed up until 28 October 2014). On this see also ABC TV, 'Concern about status of women in Victoria's legal system,' *7.30 Report*, 18 October 2013 (Rob Hulls).

<sup>269</sup> Ibid.

<sup>270</sup> See the Department of Premier and Cabinet, *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees* (Department of Premier and Cabinet, 2014 edn) which notes: 'It is Government policy that Government boards and committees more accurately reflect the composition of the Victorian community. In particular, it is Government policy to: seek to increase the representation of women on Government boards and committees by setting targets for the appointment of women and encouraging bodies to put forward female nominees for boards and committees. The current target is that 50 per cent of new appointees will be women,' 3.3, 6.

<sup>271</sup> ABC TV, 'Concern about status of women in Victoria's legal system,' above n 159, part 4.

<sup>272</sup> Court Services Victoria, *Judicial Appointments*, (last viewed 28 May 2014) Court Services of Victoria <http://www.courts.vic.gov.au/judicial-appointments>.

<sup>273</sup> Kathy Mack and Sharyn Roach Anleu, 'In-court Judicial Behaviours, Gender and Legitimacy' *Griffith Law Review* (2012) 21:3 728-51, 733.

<sup>274</sup> Sian Elias, 'Justice for One Half of the Human Race? Responding to Mary Wollstonecraft's Challenge' *The Judicial Review* (2012) 10:4 399-417, 405.

It is the sharing of these differing experiences and perspectives and the challenges to the 'unconscious worldview of the secure and complacent'<sup>275</sup> – not only in the courtroom but also in the informal settings of shared lunchrooms and corridors – that can bring about important changes. As New Zealand's Chief Justice Dame Sian Elias surmises, 'shifts in the attitudes' of those from more conservative backgrounds 'can be attributed to working contact with people who have experienced discrimination'.<sup>276</sup> As one magistrate in the present research explained, 'you need appointments that reflect the changing nature of magistrates' court work'.<sup>277</sup>

Family violence is predominantly a gendered form of violence. Whereas most men's experience of violence is at the hands of other men, usually a stranger, for women the most likely perpetrator of violence against them is a current or previous partner. It is also important to consider the gendered impact of violence. In the Australian Bureau of Statistics 2012 *Personal Safety Survey*<sup>278</sup> survey, over three-quarters of women who experienced emotional abuse by a male partner reported feeling anxious and fearful due to the abuse, compared to 46 per cent of men who experienced emotional abuse by a partner.<sup>279</sup> It may be argued that the violence and harassment women experience is so commonplace and normalised that often men do not even see it. These different experiences of and responses to victimisation arguably give women a different appreciation and understanding of the nuances of violence, and this has implications both for women who are seeking protection from the court and women magistrates who are hearing evidence. For men who have perpetrated family violence, it is important that they see women in public positions of power who are vested with the authority of the court.

### **Gendered judicial behaviour**

A judiciary that is gender representative and feminised is significant for the experience of women seeking protection from intimate partner male violence. Women who have experienced family violence at the hands of controlling and authoritarian men are often particularly vulnerable. While there is no doubt that women can behave in controlling and authoritative ways, national research on the Australian judiciary<sup>280</sup> found that there were significant differences in the how the gender

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<sup>275</sup> Ibid, 401.

<sup>276</sup> Ibid, 406.

<sup>277</sup> Magistrate 2.

<sup>278</sup> Australian Bureau of Statistics, *Personal Safety Survey 2012 4906* (Australian Bureau of Statistics, 2013). See <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

<sup>279</sup> DVRCV, 'Figuring Violence' (2014) Autumn/Winter *DVRCV Advocate*, 45-6, 45.

<sup>280</sup> See Mack and Roach Anleu, 'In-court Judicial Behaviours, Gender and Legitimacy', above n 164, part 4.

of magistrates affected their courtroom styles and demeanour.<sup>281</sup>

In this vein, the National Court Observation Study<sup>282</sup> found that women magistrates were 'more patient, good natured and courteous ... and men significantly more impatient, inconsiderate, bored and harsh'.<sup>283</sup> They also found that women made more eye contact with and more often spoke directly to defendants. Research into judicial attitudes indicates that women magistrates regard being effective communicators and listeners to be significantly more important to their judicial role than do men<sup>284</sup> and, interestingly, women value legal skills more than do their male colleagues.<sup>285</sup> These findings suggest that women magistrates may bring a somewhat different orientation and lens to their everyday work as judicial officers. These gendered differences in demeanor and in the judicial qualities nominated as important could have resonance for women survivors of family violence who appear before the courts.<sup>286</sup>

### **Magistrates' training**

Given that family violence is not only a large part of the court list, but also permeates much of the work of the magistrates' courts, training around family violence is regarded as important by magistrates and court users. Currently magistrates receive four days of professional development a year (when courts are closed), one of which is focused on family violence. There is also education around cultural diversity and ATSI issues, and additional optional professional development is available. The Judicial College of Victoria delivers a one-day family violence training session, a large component of which explores the social context of family violence. However, for magistrates in regional and rural areas it can be difficult to get to optional training; as one magistrate noted:

We have maybe 200 [cases] in our list a day and need other magistrates to come and do it, so we have to get someone from the city here for the day. The logistics can be hard.<sup>287</sup>

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<sup>281</sup> Ibid, 740 notes that 'Identifying a particular demeanour reflects both observers' assessments of the overall effect of verbal and non-verbal behaviours, such as tone of voice, gesture, facial expressions, and content of speech'.

<sup>282</sup> Although only criminal cases were observed in the Study, results would arguably be transferable to FVIO matters

<sup>283</sup> Mack and Roach Anleu, 'In-court Judicial Behaviours, Gender and Legitimacy', above n 164, part 4, 741.

<sup>284</sup> Ibid, 735.

<sup>285</sup> Ibid, 736.

<sup>286</sup> Ibid, 738. Mack and Roach Anleu also documented the enormous pressure magistrates are under to get through court lists. They usually have between fifty and seventy matters to consider (which was the size of the FVIO lists we observed in our research), which means that they spend on average 4 minutes and 13 seconds on each matter, although women magistrates spend longer. The stress of long court lists was a matter raised by the magistrates in the present research.

<sup>287</sup> Magistrate 1.

On the importance of training, one magistrate commented:

[Training is] very useful. It gives you an understanding of the real issues. It can be easy to think ‘why don’t you both grow up!’ The amount of training we get must have reduced the amount of death and injury.<sup>288</sup>

Magistrates spoke about both formal and informal training. They suggested that informal training and peer education goes on daily in corridors and across lunch tables. During such discussion of the issues that arise in cases is when much applied learning takes place. In these spaces peers can question and challenge each other, but there is less likelihood of this occurring if one’s peers are from the same background as oneself. If it is

middle-class, white men sitting around the table talking with each other, rather than a diverse mix of people, these challenges are less likely to be made.<sup>289</sup>

More importantly, inherent to these informal discussions is a level of peer accountability.

### **Getting children on orders**

*‘It’s easier to get Aboriginal kids on orders.’<sup>290</sup>*

*‘[A] lot of men don’t understand the impact of exposure to family violence on children.’<sup>291</sup>*

The Family Violence Protection Act is explicit that children who witness violence are experiencing family violence.<sup>292</sup> However, we were told that many magistrates are reluctant to include children on FVIOs: ‘Even when children are witnessing violence, they are not put on the orders’.<sup>293</sup> However ‘if police are the applicants and they include the kids, the magistrate is more likely to put them on’.<sup>294</sup> Another lawyer suggested that the:

FVIO application form needs a paragraph not just a tick box to fill in about the children’s witnessing of violence. Otherwise when women are giving sworn evidence about the violence the children have witnessed some magistrates will view it as an add-on because it has not been gone into in detail on the application.<sup>295</sup>

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<sup>288</sup> Ibid.

<sup>289</sup> Magistrate 2.

<sup>290</sup> Advocate 31.

<sup>291</sup> Magistrate 3.

<sup>292</sup> Family Violence Protection Act, Section 5.

<sup>293</sup> Advocate 35.

<sup>294</sup> Advocates 31.

<sup>295</sup> Advocate 27.

Some magistrates take the view that if an FVIO stops violence against a woman, it will also stop the violence the children are experiencing as witnesses. Yet one lawyer explained that this assumption is problematic because it:

lets men off the hook ... they need to understand that their children's exposure to violence from them is violence against their children.<sup>296</sup>

A CLC lawyer interviewed stated that magistrates usually include ATSI children on orders, when women are represented. In contrast, an ATSI service worker claimed that where ATSI women are not represented and experience complex and compounded socio-legal disadvantage, it can be difficult to get children included on FVIOs. This problem is exacerbated by a lack of understanding among some magistrates of ATSI familial structures and kinship networks.<sup>297</sup>

Workers and women alike told the researchers that private and Legal Aid lawyers for both parties often place a great deal of pressure on women not to include children by arguing that the respondent will consent to an FVIO as long as the children are removed from the application. One woman who was unrepresented recalled that '[h]e [her abuser] had a duty lawyer. I was really nervous of court, I had to consent to taking the kids off the order even though he was threatening to burn the house down'.<sup>298</sup> Another worker commented that if a woman is unrepresented the man's lawyer will invariably argue that 'we will consent as long as the kids are not on the order'.<sup>299</sup> Although magistrates have the woman's reasons for wanting the FVIO to include children in the application before them, the researchers heard of no situations in which the magistrates scrutinised the 'consent' around the excision of children from orders. Even when parties through their lawyers consent to children being on the order, this does not necessarily happen. Workers spoke of a case in which:

There was a threat to kill by text message. Both lawyers agreed that the kids should be on the order, but the magistrate said as there was no threat to the children he would not include them on the order.<sup>300</sup>

One of the problems highlighted by this research is that many of the parties in FVIOs do not have family law agreements or orders in place, and so child contact issues including contact times are not settled. This means that even though an FVIO is in place restricting contact, section 92 of the

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<sup>296</sup> Advocates 31.

<sup>297</sup> Advocates 28.

<sup>298</sup> Survivor 20.

<sup>299</sup> Advocate 33.

<sup>300</sup> Advocates 28.

Family Violence Protection Act creates an exemption to this and permits communication between applicants and respondents to organise contact times or communication with children, for the respondent parent. This exemption leaves open the potential for continued abuse: if for example text messages are sent by the respondent concerning children's arrangements, but are also abusive, many workers and women told us, because police see the word 'children' in the text, they argue that it is not a breach of the FVIO, but rather is a family law matter.

### **Dealing with family court orders**

*'[W]e refuse to do parenting orders at court. It is not appropriate,[and] women don't have capacity to consent.'*<sup>301</sup>

*'Family law is really complex and too hard to navigate without representation and Legal Aid is hard to get and takes too long in urgent matters, so it all gets wrapped up with the FVIO.'*<sup>302</sup>

A recent Productivity Commission Report on access to justice, recognised that there is a high level of unmet need for legal services in rural and remote areas.<sup>303</sup> Legal Aid and CLCs have lost funding, which has particularly impacted on family law matters. Additionally, the high cost of private lawyers<sup>304</sup> can create a situation where it is only through the FVIO process that the parties can access legal representation, which in turn puts pressure on those involved to address family law matters at that court appearance as well.

The majority of applicants do not have family court agreements in place when they are at court for FVIOs, particularly as FVIOs often come at the end of a relationship, before any thought of family law proceedings has occurred. Most family violence service workers and community lawyers complained that private lawyers for both applicants and respondents, and sometimes magistrates, put a great deal of pressure on women to make family law agreements at court. At times women too may want family law matters negotiated, especially around property, because 'most women have small property entitlements that are vital to them but not worth going to court

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<sup>301</sup> Advocate 38. See glossary, 189.

<sup>302</sup> Advocate 27.

<sup>303</sup> Productivity Commission, *Access to Justice Arrangements: Draft Report* (Productivity Commission, 2014) 661.

<sup>304</sup> *Ibid*, 112 notes that: 'Hourly rates vary depending on the location and seniority of the lawyer. Some evidence suggests that partners typically charge more than \$600 per hour, while associates charge around \$400 per hour... To put this in perspective, the average full time employee in Australia earns around \$34 per hour'.

for, so this can get mixed up in intervention order appearances'.<sup>305</sup>

The limited availability of legal assistance for family law matters is outside the scope of this research. However, it is important to note that this means family law issues often remain unresolved, which has ongoing impacts on women who have experienced violence and controlling abuse. One duty lawyer said:

there is a misuse of family violence by private lawyers as a first step in family law proceedings and this impacts on the value of FVIOs for everyone else; although, having said that, it is often the exception that there is *no* family violence.<sup>306</sup>

For some magistrates the existence of family law proceedings or orders can complicate FVIO applications. Although the Family Violence Protection Act gives magistrates the power to suspend and vary family court orders and agreements in relation to children, there appears to be a great reluctance on the part of some magistrates to do this. 'Magistrates rarely touch family court orders ... they may suspend them for a very short time', one lawyer remarked.<sup>307</sup>

### **Undertakings**

*'[I]n my two years only one undertaking I have been involved in did not later end up in an intervention order.'*<sup>308</sup>

Based on the court observations in this research, we found that magistrates typically told women that if an undertaking were breached she needed to return to court and would be granted an FVIO. However, in these cases the magistrates did not inform women that police have no power to enforce the undertaking if it is breached.

On the whole, workers and women expressed the view that undertakings are ineffective. Workers said that they urge women not to agree to undertakings as they have no power. Yet some women do consent to undertakings, for a range of reasons. For instance, if an FVIO is granted, respondents are prohibited from holding a firearms licence; this may result in difficulty in managing a farm or losing a job (such as in the security sector) which requires a firearms license and subsequently impact on the financial resources available to a survivor's children through child

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<sup>305</sup> Women's Legal Service Victoria has proposed the creation of a family law tribunal to resolve property disputes valued at under \$100,000. See Women's Legal Service Victoria, *Submission: Access to Justice Arrangements* (Women's Legal Service Victoria, 2013) 25.

<sup>306</sup> Advocates 32, emphasis added.

<sup>307</sup> Ibid

<sup>308</sup> Advocate 24

support. Women may also consent to undertakings because they do not want to return to court or because, in the words of one worker:

they don't have it in them to fight. They have fought for their lives for 25 years and you lose, so they don't want to lose in court.<sup>309</sup>

Some survivors accept undertakings because they have confidence in the magistrate's recommendations. One woman, for instance, said:

I had the same magistrate three times. I trusted that judge. He said the undertaking was okay, although I felt safer with an intervention order.<sup>310</sup>

The limitations of undertakings in regards to safety and police responsibility are apparent in Kalia's account.<sup>311</sup> She had originally applied for an FVIO but was issued with an undertaking instead. In the midst of receiving a threat to kill from her abuser, she rang emergency services.. The police attended but took no action. On the following day she went to a different court – a Family Violence Division Court in Melbourne – and the magistrate did not understand why she had not been granted an FVIO at court and was greatly concerned that the police had not removed the respondent and initiated an FVIO when they were called.

### **Cross-applications and mutual orders**

A number of workers spoke about the increase in the number of 'mutual orders' as a result of cross-applications.<sup>312</sup> While there may sometimes be active physical resistance to male violence by the woman, research into cross-applications in New South Wales (NSW) reveals a great disparity in the history and severity of such violence. Men's violence causes more harm and continues for longer, while women's violence causes much lesser injury and is largely responsive.<sup>313</sup>

Workers indicated that women often do not have the energy to contest cross-applications at

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<sup>309</sup> Ibid.

<sup>310</sup> Survivor 24.

<sup>311</sup> Survivor 15.

<sup>312</sup> See glossary, 187. Cross-applications occur where perhaps a woman has made an application for an FVIO and then the respondent has replied by making his own intervention order application against her. Cross-applications can also be made by police when they have not been able to establish who is the primary aggressor. Victoria Police, *Code of Practice*, above n 33, part 1, 17

<sup>313</sup> Julia Mansour, *Women defendants to AVOs: What is their experience of the justice system?* (Women's Legal Services NSW, 2014) 18.

court. Frequently women experience cross-applications as a further attempt to control and manipulate them and the system and to continue the abuse they have experienced. Workers also perceived a cross-application as an attempt to create a bargaining tool for the respondent in family law negotiations. Women and workers indicated that most men involved in cross-applications are legally represented and women often 'consent' to the application before the hearing. As a consequence, the court does not typically scrutinise these orders. One worker suggested that magistrates 'just accept these as consent orders which get them in and out of court quickly, without asking too many questions'.<sup>314</sup>

In one region a lawyer surmised that there are not as many cross-applications by police as there used to be, both because their Family Violence Unit are more skilled in working out what happened when they attend incidents and 'we have also had costs ordered against police in unsuccessful cross-applications because they hadn't investigated them properly'.<sup>315</sup>

In this vein, the literature has begun to highlight the growing misuse of cross-applications and the consequent need for legislative reform around this issue.<sup>316</sup> As Douglas and Fitzgerald highlight, 'a cross-application means much more than that the parties simply have a protective order'.<sup>317</sup> The existence of an FVIO application against a woman has significant implications for her in relation to many legal matters as well as her access to support services. As one worker explained:

I tried very hard to organise a support worker for her through a family violence service but as he [her ex] put an FVIO out on her in retaliation, she was classed as a perpetrator and could not be supported [by many services].<sup>318</sup>

Cross-applications also have implications for the residence of children, contact arrangements, survivors' engagement with the criminal justice system and, most importantly, victim safety.<sup>319</sup> Furthermore, the stories shared by women in this study indicate that cross-applications can serve

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<sup>314</sup> Advocate 24.

<sup>315</sup> Advocate 31.

<sup>316</sup> Jordan and Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong*, above n 1, part 1, 27.

<sup>317</sup> Heather Douglas and Robin Fitzgerald, 'Legal Processes and Gendered Violence: Cross-applications for Domestic Violence Protection Orders,' (2013) 36:1 *University of New South Wales Law Journal* 56-86, see 86, also quoted in *ibid*.

<sup>318</sup> Survivor 17.

<sup>319</sup> Douglas and Fitzgerald 2013, 86

to further shame and humiliate survivors.<sup>320</sup>

### Exclusion orders

*'[I]t's very hard in the country when people have no relatives nearby .... I won't make exclusion orders if there is no available housing ... I make orders with base [no family violence] conditions.'*<sup>321</sup>

Workers identified that because of a severe lack of housing very few exclusion orders are made in regional and rural Victoria. They also noted that women know that in the event that an exclusion order is granted, they will be pressured to accept their partner back into the 'family' home.<sup>322</sup> Workers also said that on rural properties women are unlikely to apply for exclusion orders because:

they knew they would never get them. Properties often have other family members on them or else have been in the family for many years and women don't feel entitled to stay.<sup>323</sup>

Lawyers noted that, because there is no available housing and women do not want their former partners to be homeless, where an exclusion order has been made subsequent variations of orders to allow partners back into the house, with the base conditions<sup>324</sup> prohibiting family violence in place, are not uncommon.

The researchers heard of respondents moving hundreds of kilometres to access affordable housing, which results in loss of work and can also mean that either the children do not get to see their father, or the costs of contact are so high that another level of financial stress ensues.

However, when exclusion orders are not made, women and children may be forced to relocate, and children 'are far more disrupted because the police have to go back with the women to retrieve belongings and they can't get many things'.<sup>325</sup> Workers argued that it is more appropriate for men to be 'removed and the kids stay in the home' so that children's lives are not disrupted.<sup>326</sup> In this regard, 'men often give pets away and pets are really important to children'.<sup>327</sup>

The fact that exclusion orders are not being made can also have implications for women who are

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<sup>320</sup> Jordan and Phillips , 27

<sup>321</sup> Magistrate 3.

<sup>322</sup> See 56-57 of this report.

<sup>323</sup> Advocate 31.

<sup>324</sup> See glossary, 187.

<sup>325</sup> Advocate 35.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

tenants, in respect of their status on the tenancy 'black list', if they break or breach leases, are behind in rent or there is damage to property as a result of perpetrator violence. This is a particular problem in small communities, where there is little rental housing. If an exclusion order is made as part of an FVIO, women can apply to the Victorian Civil and Administrative Tribunal (VCAT)<sup>328</sup> to get their former partner's name removed from the lease, to break a lease early without penalties or to resolve bond issues where there has been substantial property damage as a consequence of the violence. Some of the services we spoke with were unable to utilise the VCAT process because of the limited number of exclusion orders made.<sup>329</sup>

### **Applicant and respondent workers**

*'[I]f there were applicant and respondent workers we could reduce the workload in court by 95 per cent.'*<sup>330</sup>

*'[W]omen go to court, don't get an order, come to us, get support and then an order ... please explain [why this happens]!'*<sup>331</sup>

None of the courts the researchers visited had designated funded applicant or respondent workers who attend court on FVIO days. Family violence services offer court support workers for their clients and sometimes assist women who are fronting court without support, but they are not generally funded to do this. In courts where there are funded applicant and respondent workers<sup>332</sup>, they are able to work with parties before, during and after the court appearance. Their court presence is important because they provide parties with understandable information about the FVIO application, answer questions and offer links to services and resources available in the community that provide support (for example, in relation to housing, counselling, family violence, Men's Behaviour Change Programs,<sup>333</sup> financial assistance, and drug and alcohol services). Lawyers suggested that respondent workers are 'useful in defusing men's anger' and because '[m]en in particular often have little information about how an intervention order would affect them'.<sup>334</sup> On the virtues of respondent workers, many lawyers said that men are in a better

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<sup>328</sup> VCAT has a dedicated Family Violence Support Worker and VCAT Koori and Family Violence Support Worker who deals with all of these applications and goes through a safety strategy with each applicant.

<sup>329</sup> Advocates 34.

<sup>330</sup> Magistrate 1.

<sup>331</sup> Advocate 29.

<sup>332</sup> There are funded applicant workers at Ballarat, Frankston, Heidelberg, Melbourne, Moorabin and Sunshine courts. There are also funded respondent workers at these courts except for Melbourne and Sunshine courts.

<sup>333</sup> See glossary, 189.

<sup>334</sup> Advocate 29.

position to agree to orders once the FVIO application and the process are explained to them.

Magistrates also commented that:

The more work that could be done at the first hearing, the more likely it was that the [FV]IOs would be consented to and referrals and services put in place to assist with making orders hold.... You get an applicant appearing before you and you have to ask them very personal questions in a public forum. They are traumatised and intimidated being at court; that is the nature of court. If the work is done beforehand, you don't have to ask as many questions.<sup>335</sup>

According to one long-time applicant lawyer, respondent workers smooth the court process because:

It is hard to deal with unrepresented respondents (as the applicant's lawyer) because you are dealing with issues around children, housing and bills.<sup>336</sup>

There was unanimous agreement among survivors, workers, lawyers and magistrates that funded applicant and respondent services would assist in making court appearances less stressful and more efficient, and would ease the load for lawyers, prosecutors and magistrates. This saving would no doubt go some way towards recouping the cost of funded workers. Furthermore, having a holistic response in the first instance provides support for the entire family at a time of great transition and significant stress and trauma.

## Interpreters

*'there are many women worse than me, some men make you prostitute'.*<sup>337</sup>

As CRRLJ researchers have argued, '[t]erminology used in the lower courts can be confusing and confronting and even more challenging for CALD communities'.<sup>338</sup> In addition to extensive differences in language, style, pronunciation, grammar and dialect between GAE and Aboriginal English, cultural ideologies and practices can contribute to misunderstandings.<sup>339</sup> Regardless, 'there is typically an assumption that peoples from different backgrounds have shared

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<sup>335</sup> Magistrate 2.

<sup>336</sup> Advocate 31.

<sup>337</sup> Survivor 24.

<sup>338</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 166.

<sup>339</sup> Ibid and Diane Eades, "'I Don't Think It's an Answer to the Question: Silencing Aboriginal Witnesses in Court' (2000) 29:2 *Language in Society* 161-96; Diane Eades, 'Communicating with Aboriginal People in NSW' (2008) 20:10 *Judicial Officers' Bulletin* 85-86; Wallace, "'Virtual Justice in the Bush'", above n 142, part 3; Natalie Siegel 'Court in the System: The Impact of the Circulating Bush Court Upon Criminal Justice Administration and Domestic Violence Prosecution in Aboriginal Communities,' (2003) 15:1 *Current Issues in Criminal Justice* 56-60.

understandings of what language means, to the detriment of those whose first language is not GAE'.<sup>340</sup> It is vital that magistrates acknowledge the barriers that CALD and ATSI survivors may face in courts where GAE is 'absolutely regarded as "standard"'.

As advocates and recent studies have affirmed, hearing impaired persons also experience difficulty accessing and using interpreters. It is frequently difficult to locate Australian Sign Language (Auslan) interpreters and this difficulty is compounded in regional, rural and remote locations.<sup>341</sup> It can take a long time and be expensive to transport interpreters from metropolitan locations and so Auslan interpreters have appeared via video remote interpreting or video remote language interpreting, yet these mechanisms are not without difficulties.<sup>342</sup>

Undoubtedly, access to interpreters and services that can assist women and interpreter and magistrate training are greater in metropolitan areas than in regional, rural and remote locations.<sup>343</sup> Consequently, it is not only the availability but also the effectiveness of interpreters that can be problematic in non-metropolitan courts. While resources are limited, it is important that access to interpreters be extended, particularly in regional and rural locations. As Hale asserts, 'the fact is that when one participant cannot understand or be understood, it is the legal process itself that suffers and justice cannot be done'.<sup>344</sup>

This research found that most services did not work with women who needed interpreters for court. Workers indicated that many CALD women are isolated from mainstream services and often reluctant to seek help from CALD family violence services. As the researchers have observed elsewhere in this report, regional CALD women are more likely to engage with services in metropolitan areas and, in any event, these services are drastically overburdened and under-resourced.<sup>345</sup> Some workers said that if they are working with CALD women who face language barriers they refer them to inTouch, the Multicultural Centre Against Family Violence, which

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<sup>340</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 166. See also Stephen Norrish, 'Aboriginal English and Language,' (2002) 14:11 *Judicial Officers' Bulletin* 88-9; Jelena Popovic, 'Migrants and Crime: A Magistrate's Perspective' (Paper presented at the Australian Institute of Criminology the Criminal Justice System in a Multicultural Society Conference, Melbourne, 4-6 May 1993) 1-14.

<sup>341</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 167. See also Jemima Napier, 'Here or There? An Assessment of Video Remote Signed Language Interpreter-Mediation Interaction in Court' in Sabine Braun and Judith L. Taylor (eds) *Videoconference and Remote Interpreting in Criminal Proceedings* (University of Surry, 2012) 145-85.

<sup>342</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 167.

<sup>343</sup> Ibid.

<sup>344</sup> Sandra Hale, 'The Need to Raise the Bar: Court Interpreters as Specialised Experts' (2011) 10 *The Judicial Review* 237-258, see 238.

<sup>345</sup> See 51, 53 of this report.

provides specialist support and has in-house lawyers.<sup>346</sup> However, lawyers and support workers who had used interpreters were very concerned about the quality of interpreting services, and not only in relation to the languages of more recently arrived communities. Their concerns are not unfounded; while interpreters should perform an impartial role, it was apparent from the researchers' discussions with a CALD survivor that this was not always the case. Sunny's interpreter seemed somewhat dismissive of the violence she had experienced, telling her that 'there are many women worse than me, some men make you prostitute'.<sup>347</sup> Certainly, in 2007, Women's Legal Service NSW noted problems with both the availability and competency of professional interpreters.<sup>348</sup> Furthermore, the researchers also heard of cases where the gender of the interpreter organised by the court was inappropriate.

One lawyer proposed that having interpreters available at court for the first and second mentions would save time and resources and assist early resolutions because the parties would then be able to negotiate before the hearing. She noted that:

If the applicant doesn't speak English you can't negotiate and evidence can't be given; you have to adjourn until interpreters are available. It wastes a lot of time and isn't good for the women.<sup>349</sup>

One lawyer said that there is no access to the Telephone Interpreter Services at their regional court but that there should be at all stages of the court process. One CALD survivor recalled that when she attended court on her own for the FVIO application the registrar made it easy for her by spending a lot of time with her and making sure she understood the process and she did not need an interpreter; however, she did ask for one for the hearing. She emphasised the importance of interpreters, recounting that:

The barrister was really tough and because they got an interpreter that really helped. Speaking another language, it's easy to mess my head.<sup>350</sup>

A family violence service that uses three-way interpreters acknowledged that it is very hard for women, especially if what is being talked about is really personal. Workers appreciated that it can be particularly difficult for regional and rural women because privacy is less assured:

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<sup>346</sup> inTouch have a very limited capacity are not taking new clients. Their telephone advice service operates 2.5 hours a week and is not a free call.

<sup>347</sup> Survivor 24.

<sup>348</sup> Women's Legal Resources NSW, *A Long Way to Equal*, above n 42, part 3, 23.

<sup>349</sup> Advocate 31.

<sup>350</sup> Survivor 24.

Being in a small town, everyone knows each other. It just takes one person to know and everyone does, and that can be through an interpreter.<sup>351</sup>

### **Court complaint procedures**

Some survivors, lawyers and workers who had negative experiences with magistrates and registrars contemplated lodging complaints through the Magistrates' Court. Others did not discuss doing so, but were clearly dissatisfied with particular registrars and magistrates who they believed acted inappropriately or improperly.<sup>352</sup> In general, advocates were reluctant to formally proceed with complaints regardless of whether they believed others could substantiate their claims. A group of lawyers and workers spoke of a magistrate they said exhibited aggressive behaviours: 'he yells at advocates and he yells at clients. The way he behaves replicates family violence', they explained.<sup>353</sup> They maintained that 'the registrars are [also] afraid of him' – a claim that survivors also made in regards to this particular magistrate.<sup>354</sup> Making a complaint against such individuals was not regarded as a viable option because advocates feared the possible repercussions. Indeed, the aforementioned magistrate reportedly 'kicked out of court' support workers from another agency, during a hearing.<sup>355</sup> Advocates who were concerned about their ability to assist survivors at court when appearing before such magistrates also worried that in the aftermath of making a complaint, they and their future clients might encounter animosity from court officials, and not necessarily only from those named in a complaint. This was particularly true among those who thought the culture at the court was problematic.

Some workers and lawyers who participated in court user meetings<sup>356</sup> felt that this was an informal but comfortable alternative space in which to raise concerns with particular court officials, yet others felt that this was not an appropriate forum to do so. You have to be 'very careful how you raise those complaints', workers explained, and 'tread very carefully'.<sup>357</sup> That workers and lawyers did not feel confident in raising concerns over the conduct of court officials (whether in an informal setting such as court user meetings or through the formal Victorian

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<sup>351</sup> Advocate 39.

<sup>352</sup> In accordance with the: Magistrates' Court of Victoria *Complaints Policy* (Magistrates' Court of Victoria, 2014) 9; complaints about registrars and magistrates must be made to the Chief Magistrate; complaints about other court staff should be made to the Complaints Officer of the Magistrates' Court of Victoria. See also: Magistrates' Court of Victoria, *Judicial Complaints Process* (Magistrates' Court of Victoria, 2013) 2-4; Magistrates' Court of Victoria, *Making a Complaint* (Magistrates' Court of Victoria, 2010).

<sup>353</sup> Advocates 28.

<sup>354</sup> Ibid.

<sup>355</sup> Advocate 25.

<sup>356</sup> See above n 101, part 4.

<sup>357</sup> Advocates 38.

Magistrates' Court complaint processes) is perhaps not surprising, but it is worrying. Court advocates need to maintain ongoing relationships with court officers, particularly in regional and rural settings where numbers of advocates and court officials are typically lower than in metropolitan locations, and, consequently, familiarity between advocates and court officials is greater. At worst, this can restrict an advocate's capacity to highlight problems in relation to court responses to family violence and effect structural change, as well as diminish their faith in court officials and court accountability.

The researchers heard that some survivors found lodging formal complaints – writing letters about their experience – was empowering because it gave them a voice in a setting in which they sometimes felt silenced. However, these survivors found the court complaint process to be disempowering and the outcomes frustrating. Survivors also expressed anxiety and emphasised the challenges they felt existed with the formal court complaints process. Making a complaint was viewed as a luxury or not a priority in the context of the instability and trauma of ongoing family violence incidents and FVIO breaches, family law matters and negotiating shared parenting and the dissolution of relationships, separation of finances and assets, and physical relocation. This was best illustrated by Cassie's account. She recalled an experience with a magistrate who numerous agencies deemed to act unprofessionally. Cassie felt that the magistrate in question was 'awful, scary', 'anti-woman', and dismissive of and minimising the violence she had experienced.<sup>358</sup> 'He kept telling me he didn't believe in [family violence] intervention orders', she explained, instead recommending that 'we [my abuser and I] should patch it up'.<sup>359</sup> She felt 'completely let down by the system' and was determined to make a complaint about this magistrate, telling the researchers:

I don't care about what his views are on women who want intervention orders. Magistrates must take each case on its merits. I will make a complaint about the magistrate. I don't care how high I have to go to get him removed.<sup>360</sup>

When the researchers followed up with Cassie to talk about how she found the complaints process, we learnt that she had not been able to proceed. Amid contending with matters pertaining to the dissolution of her relationship, she was overwhelmed by ongoing violence and difficulties with police and court responses to this violence. A further barrier to survivors pursuing

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<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Ibid.

complaints is the often infallible esteem in which magistrates are held. The researchers were told of a lawyer who witnessed what she considered to be the bullying of a survivor by a magistrate in court. When later asked about her perception of the magistrate, the survivor was reported to have been displeased with but accepting of his conduct as legitimate. Some lawyers were of the opinion that the authority of magistrates is so assured that their behaviour is not questioned by survivors.

The Magistrates' Court *Complaints Policy* aims to outline an easily accessible process to investigate and resolve complaints 'in a fair, impartial and prompt manner' which 'consistently captures and records client feedback ... as part of ongoing business review and improvement efforts' and seeks to 'prevent escalation of complaints by handling them effectively at a local level'.<sup>361</sup> We do not have a complete picture of the numbers of complaints lodged against magistrates or Magistrates' Court staff. Detailed data on complaints received and investigated by the magistrates' courts and the Independent Broad-based Anti-corruption Commission (IBAC) is not publicly available.<sup>362</sup> In any event, the number of complaints is not a measure of possible misconduct, because not all incidents are reported or substantiated. However, while the vast majority of magistrates perform their duties with great competence and care, the critiques of lawyers, workers and survivors consulted in this research do not engender faith in the complaints processes of the Victorian Magistrates' Court, or its ability to adequately alert the court to community concerns or effect resolution of those concerns. As Potas asserts, '[t]he proper conduct and performance of judicial officers are critical to the maintenance of public confidence in the administration of justice'.<sup>363</sup> Public confidence in the magistrates' courts is particularly important given that these 'people's courts'<sup>364</sup> 'handle the majority of civil and criminal lodgements and are the only courts most Australians will ever encounter'.<sup>365</sup> For this reason, as CRRLJ researchers have elsewhere noted, 'a person's encounter with a magistrates' court can

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<sup>361</sup> Magistrates' Court of Victoria *Complaints Policy*, above n 243, part 4, 1.

<sup>362</sup> There is currently a framework for complaints pertaining to magistrates to be investigated by an independent body. The Independent Broad-based Anti-corruption Commission (IBAC), created under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), can investigate the conduct of public sector workers (such as magistrates). However, the focus of IBAC investigations is predominantly high-level police misconduct, as highlighted by the recent annual report which also stresses the importance of judicial independence, which could potentially be a barrier to investigations. No individuals or agencies consulted for this research reported lodging complaints with IBAC. See IBAC, *Annual Report 2013-2014* (IBAC, 2014)10, 17-18.

<sup>363</sup> Ivan Potas, 'The Judicial Commission of NSW: Treading a Fine Line Between Judicial Independence and Judicial Accountability,' (2001) 18:1 *Law in Context* 102-28, see 105.

<sup>364</sup> Willis, 'The Magistracy: The Undervalued Work-horse of the Court System,' above n 157, part 4, 129, 134.

<sup>365</sup> Harris, Jordan and Phillips, 'Courting Justice Beyond the Cityscape,' above n 35, part 3, 158.

profoundly shape their perception, not only of the court, but of the criminal justice system at large'.<sup>366</sup>

Judicial accountability has certainly been a less visible issue than accountability of other state agents such as police. The explanation for this is perhaps – at least in part – due to the tension between what Potas identifies as the twin requirements of judicial accountability and independence. On this issue, the Victorian Magistrates' Court *Judicial Complaints Process* notes:

In general, magistrates are accountable through the public nature of their work and the requirement that they give reasons for their decisions. The immunity from direct discipline maintains the independence of magistrates, so that justice can be administered impartially (without fear or favour).<sup>367</sup>

Perhaps, if there is a concern that the Victorian Magistrates' Court complaints policy might be in conflict with judicial independence, this could be overcome by complaints being handled by an independent body akin to the NSW Judicial Commission.<sup>368</sup> Unlike Victoria, in NSW any member of the public, not only parties to proceedings, has 'standing' and is entitled to lodge a complaint to the NSW Judicial Commission. It is beyond the scope of this research to evaluate this body, but the researchers note that the Judicial Commission Bill 2014 (Vic) provides authority for a public statutory body that parallels the NSW organisation. In recent decades, following a series of high-profile incidents of judicial misconduct, the formation of such an organisation has been discussed and dismissed.<sup>369</sup> It is concerning that there has been little public consultation on the nature of this commission, but its potential is great. As noted in the *Judicial Commission Bill 2014 Introduction Print Explanatory Memorandum* acknowledges:

Public confidence in the judiciary as a whole is a central component of judicial independence. Only a court system which commands the public's trust in its authority to adjudicate impartially and with integrity can be regarded as both effective and independent of external influence.<sup>370</sup>

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<sup>366</sup> Ibid.

<sup>367</sup> Magistrates' Court of Victoria, *Judicial Complaints Process*, above n 243, part 4, 2.

<sup>368</sup> Judicial Commission of New South Wales, *From Controversy to Credibility: 20 Years of the Judicial Commission of New South Wales* (Judicial Commission of New South Wales, 2008); James Thomas, *Judicial Ethics in Australia* (LexisNexis Butterworths, 3<sup>rd</sup> ed, 2009) 259-265.

<sup>369</sup> See, for instance: Deputy Premier of Victoria, 'New Commission to Receive Complaints against Judges' (Media Release, 2 June 2010); Selma Milovanovic, 'New Body to Handle Court Complaints,' *The Age* (Melbourne) 17 July 2009; Leonie Wood, 'Who Judges the Judges?' *The Age* (Melbourne) 7 December 2009.

<sup>370</sup> Parliament of Victoria, *Judicial Commission Bill 2014 Introduction Print Explanatory Memorandum* (Parliament of Victoria, 2014) 8.

Magistrates comprise almost half of the total number of judicial officers in Victoria and so it is vital that any complaints body be geared towards investigating magistrates.<sup>371</sup> As Thomas notes, there has traditionally been less focus on the conduct of magistrates than on other members of the judiciary. 'It used to be', he writes, 'that the expectations of special behaviour could only be held of the members of higher courts'.<sup>372</sup> However, Thomas asserts that '[s]uch a distinction cannot be maintained since the magistracy became accepted as a clearly identifiable sector of the Australian judiciary'.<sup>373</sup> The researchers stress that the majority of magistrates act professionally and proficiently, but this does not lessen the need for an adequate system for reviewing the rare instances when inappropriate behaviour occurs, particularly in regards to family violence matters, as they occupy a significant proportion of cases before the court.

### ***The role of lawyers in the FVIO process***

In some respects the role of lawyers in FVIO hearings is limited, as most applicants have police prosecutors acting for them in court. Researchers heard that there were very few private lawyers appearing for applicants; in some courts, CLCs are funded to do the applicant list while the Family Violence Prevention and Legal Service (FVPLS) represents ATSI women applicants. In this study, women who had been referred to a CLC from a family violence service were able to speak with the lawyer prior to their court appearance and prepare for the hearing, but in courts where private lawyers were on an applicant duty lawyer<sup>374</sup> roster funded by Victoria Legal Aid (VLA), women did not see these lawyers before the court appearance date.<sup>375</sup> Many women also appeared in court without legal representation.

Respondents were often assisted by Legal Aid, while some had private lawyers but others often appeared unrepresented. The (often prohibitive) cost of lawyers means that many survivors and respondents cannot secure representation. Furthermore, increasing cuts to CLCs and Legal Aid have severely impacted regional and rural areas, which already experience postcode (in)justice.<sup>376</sup> The growing numbers of unrepresented parties result in extended court hearings, adding to the

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<sup>371</sup> Thomas, *Judicial Ethics in Australia*, above n 259, part 4, 235.

<sup>372</sup> *Ibid*, 236.

<sup>373</sup> *Ibid*.

<sup>374</sup> Duty lawyers attend a court to appear for people who are unrepresented and desire representation. There are guidelines on the types of matters in which they can appear.

<sup>375</sup> One legal service complained that Legal Aid stopped doing conflict of interest checks, because they claimed that they were not giving legal advice by representing women at court. The legal service said that on occasion Legal Aid had already previously seen the respondent, which meant there was a conflict.

<sup>376</sup> On this issue see: Richard Coverdale, *Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law in Victoria* (Deakin University, 2011).

family violence lists of already overburdened courts. Additionally, where parties have access to lawyers but only on the hearing day, a lack of adequate preparation can mean that matters are adjourned and delayed, compounding the excessive workload of the court.

One in three cases opened in CLCs are family violence matters.<sup>377</sup> Lawyers from CLCs have usually received training in family violence, have close connections and do outreach with family violence and other support services, and participate in local family violence support networks. Specialist family violence duty lawyers were also highly regarded by survivors. Many of the women and family violence workers in this research maintained that duty lawyers who are not attached to community or specialist legal centres do not make referrals to relevant services, and that there is a propensity for some to be more interested in settling cases than assisting women. One worker claimed that generalist duty lawyers:

are timid ... they don't advocate, they just go with the flow and are in too much of a hurry and go for middle ground. They don't want to hang around court.<sup>378</sup>

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<sup>377</sup> Federation of Community Legal Centres Supplementary Submission, Productivity Commission Inquiry into Access to Justice Arrangements July 2014 p14

<sup>378</sup> Advocate 35.

## **Part 5: Interactions with and perceptions of lawyers and women's, family violence and perpetrator services**

### ***Women's experiences of lawyers***

Women in this study engaged lawyers to obtain assistance with family violence matters (such as the pursuit of FVIOs), as well as with matters associated with the dissolution of their relationships (for instance, parenting issues). They had varied experiences with lawyers from private practices, Legal Aid and CLCs. Lawyers from CLCs and those associated with specialist family violence services were most highly regarded. Women valued lawyers who listened to their concerns and requests, demonstrated empathy, and understood the impact of violence on their and their children's lives. Cassie said that she had 'a lawyer who would do anything' for her and 'took it [the violence] seriously'.<sup>1</sup> Samantha talked about the strength and drive of her lawyers – '[t]hey fight', she said, '[t]hey're strong and they stand up to him [her abuser]'.<sup>2</sup>

Survivors also appreciated lawyers who took an interest in their children. Jane's lawyers 'got to know my kids', which she 'thought was good because it's them we're fighting for'.<sup>3</sup> She felt that her lawyer's knowledge of her children improved the quality of the lawyer's advocacy and encouraged his concern for the safety of her and her children; for example, her lawyer arranged for parenting handovers to occur at police stations. Survivors were frustrated when their lawyers did not acknowledge their efforts or intent to protect and parent their children. Ingrid was angered when one of her lawyers suggested that she 'give her [daughter] up, it's not worth the hassle'.<sup>4</sup> She was glad to find a lawyer who was 'going to fight for her ... fight for me now before it's too late'.<sup>5</sup>

Some survivors talked about negative encounters with lawyers, whom they felt did not listen to them or were disinterested in family violence work. Jane said that a lawyer she engaged was dismissive; she 'would just look at her watch and roll her eyes' during their meetings.<sup>6</sup> Alita 'had lawyers before for family law but they weren't really interested in the family violence'.<sup>7</sup> Likewise, Helen sensed that her lawyer 'wasn't really interested in what he was doing' and that 'he really

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<sup>1</sup> Survivor 28.

<sup>2</sup> Survivor 11.

<sup>3</sup> Survivor 3.

<sup>4</sup> Survivor 8.

<sup>5</sup> Ibid.

<sup>6</sup> Survivor 3.

<sup>7</sup> Survivor 19.

didn't understand domestic violence'.<sup>8</sup> Consequently, she believed that he 'wanted to take a quick [approach], you know, get it over and done with quickly', which 'meant going along with' her husband's lawyers.<sup>9</sup> Women did not always feel that their lawyers understood or heard them; one woman expressed the view that her lawyer 'wasn't representing me' because she was not listening to her.<sup>10</sup>

Bella reported that her lawyer 'told me that he didn't believe me about the sexual assault' of her child.<sup>11</sup> Sometimes lawyers did not recognise the harms associated with non-physical abuse, which could mean that they were reluctant to assist survivors. Lola felt that the assistance she received from Legal Aid was dependent on 'whether the [family violence] issues were important enough'.<sup>12</sup> She said that her abuser was 'very manipulative, bullying, [using] verbal, emotional or mental intimidation and standover tactics' against both her and her children; but 'Legal Aid said it wasn't important enough to warrant Legal Aid so I had to pay for it myself', which she was unable to do.<sup>13</sup> It was clear that Lola felt disillusioned and silenced by her encounters with lawyers. When the researchers asked whether she would recommend that other survivors consult lawyers, Lola replied:

I don't know. I have no idea where they're coming from. I feel like I'm the bottom of the scum, I don't get heard, I don't get any recognition.... It's pretty much [that] I'm a number.<sup>14</sup>

Some survivors had doubts as to the competency of their lawyers and whether or not they were truly acting in their best interests. Helen had seen several lawyers; in the case of one, she 'felt that he wasn't organised ... he didn't have any of my paperwork'.<sup>15</sup> Moreover, she:

got the distinct impression that he was working for my [partner] and not for me. He was trying to convince me how tough things were for my husband when he was supposed to be there representing me.<sup>16</sup>

Similarly, Angela said that one of her lawyers, who had a tendency to 'be blokey [sic]' and 'generally represents the dads', did not connect with her; and she did not 'think he represented

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<sup>8</sup> Survivor 4.

<sup>9</sup> Survivor 4.

<sup>10</sup> Survivor 6.

<sup>11</sup> Survivor 18.

<sup>12</sup> Survivor 2.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Survivor 4.

<sup>16</sup> Ibid.

me properly, it felt like he was fighting for my ex-partner rather than me'.<sup>17</sup> She also believed that her lawyer's socioeconomic status and the culture of the court impacted on their ability to relate to and advocate for her. She argued that:

all the barristers are friends with each other, and all the magistrates are, and they're all really chummy with each other and it kind of, and I hate to say this, at a higher class than where I am, so their ideals and standards are here, I'm coming from there and so there's a huge class difference and they haven't been in the position that I am at the moment so they have no idea what it's like to have to see your abuser there [at court] three or four times a week.<sup>18</sup>

The importance of having lawyers who are knowledgeable about family violence and compassionate was evident in Macy's account. She described '[not] know[ing] what I was there [at the lawyer's] for, to be honest', and found her first encounter with a lawyer to be upsetting. She recounted a somewhat clinical meeting with 'this young girl with not a lot of life experience' who 'basically just asked me about assets and dividing everything up. I just ended up in tears', she said.<sup>19</sup> Sometimes lawyers seemed to reduce the role and agency of women.

Women did not always know how to locate accessible or affordable legal advocacy, or were not comfortable doing so. Discussing sensitive matters with strangers was too difficult for some. An ATSI survivor, for instance, said that she 'would not have gone to a CLC. I needed to go to someone I trusted or a friend I knew. I would never have gone to VALS [Victorian Aboriginal Legal Services]'.<sup>20</sup> Some survivors recommended that women escaping family violence meet with a lawyer before reporting to police or attending court. Kelly suggested that women 'go to a lawyer first' because she was of the opinion that lawyers have a better awareness of family violence than do police; 'police don't tend to take action unless it's a serious thing, unless they see you beaten up', she said.<sup>21</sup> Heather also advised survivors who are wanting to escape violence to first speak with a lawyer, 'so you know the process' – not only the court process, but also the processes associated with disclosure of family violence, such as 'mandatory reporting'.<sup>22</sup> However, it was not always the case that women approached lawyers for assistance with family violence matters. A number of women reported that they had not considered engaging a lawyer about family violence, but were more likely to consult a lawyer for family law advice. Other women only met

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<sup>17</sup> Survivor 6.

<sup>18</sup> Ibid.

<sup>19</sup> Survivor 10.

<sup>20</sup> Survivor 17

<sup>21</sup> Survivor 20

<sup>22</sup> Survivor 25.

with lawyers after being referred to one (usually at a CLC) by a family violence service.

As discussed previously in this report, there is a lack of transport in rural areas; for this reason legal advocacy can be difficult to access. Georgia ‘didn’t have a car’ so it was hard for her to find a lawyer.<sup>23</sup> And it was particularly difficult for survivors with disabilities to access lawyers.<sup>24</sup> One lawyer recounted an instance when an abuser took a survivor’s car – she ‘had a disability and relied on her car’ – without which ‘she couldn’t access traditional [legal] services’. In such circumstances, non-traditional advocacy such as the ‘Women Workers Lawyers’ Skype initiative can transcend social and geographic isolation and barriers.<sup>25</sup> As this and other recent CRRU research has demonstrated, there are other barriers to accessing legal advocacy in regional, rural and remote regions. One such barrier is conflict of interest.<sup>26</sup> A number of family violence workers and lawyers told us that some respondents in their town consulted with all of the local lawyers, thereby creating a conflict of interest so that women had nowhere to get legal assistance.

Workers and lawyers interviewed for this research identified the need for further specialist family violence training for lawyers working in regional and rural Victoria. The researchers also heard of gaps in professional development and specialist family violence legal training among many private lawyers, which results in their under-utilisation of the provisions in the Family Violence Protection Act that allow courts to make orders around ancillary matters, such as victims of crime payments for safety or relocation expenses. Additionally, one lawyer believed that legal practitioners in rural areas do not have particularly high advocacy standards because they tend not to take on many contested matters.<sup>27</sup>

### ***The expense and funding of legal advocacy***

Often survivors were unaware of the available legal channels, and women and workers alike emphasised the need for greater access to affordable legal advocacy, not only preceding and on the court appearance date, but also to address women’s unmet legal needs surrounding family violence and family law matters more generally, as well as property issues. One lawyer maintained

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<sup>23</sup> Survivor 12.

<sup>24</sup> Advocate 25.

<sup>25</sup> Ibid

<sup>26</sup> Kyle, Coverdale and Powers, *Conflict of Interest in Victoria Rural and Regional Legal Practice* above n 89.

<sup>27</sup> Advocate 31.

that the family law 'system is really complex ... too hard to navigate without representation', such as applying for 'airport watch orders and recovery orders'.<sup>28</sup>

Some survivors utilised Legal Aid or CLCs, but there were restrictions on what services and support was offered. In regards to Legal Aid, survivors and workers talked about the 'gap', referring to women who are 'not Legally Aidable [sic]', in that they do not meet Legal Aid criteria yet are not able to finance a private practitioner.<sup>29</sup> In this regard, one survivor remarked that 'VLA guidelines are a problem'<sup>30</sup>, while a lawyer commented that Legal Aid is 'hard to get and can take too long', especially for family law matters. Jane said that she had to wait weeks for Legal Aid to confirm whether or not she would receive legal assistance, and it was denied on the morning of her hearing.<sup>31</sup> Lola raised issues around the period of time for which she could access Legal Aid, because 'you've got a minimum set time to work out all your parenting plans'<sup>32</sup> yet 'most people can't resolve their children's custody in two or three hours', particularly in the context of family violence, 'when they [ex-partners] don't get on and can't communicate'.<sup>33</sup>

Jane encountered delays when seeking legal assistance and concluded that it was ultimately 'hard to get Legal Aid' because 'you have to show merit, you have to show you're going to win or they won't fund you'.<sup>34</sup> Helen was unable to use Legal Aid because 'my name is on the house ... [which] is in both our names and Legal Aid will not assist people who have assets and property'.<sup>35</sup> Although on paper Helen had assets, she commented that 'I've been strapped for cash for over 30 years ... I don't have any money, I've been financially and socially isolated'.<sup>36</sup> She stressed the need for legal payment plans 'that would be achievable' for women to meet.<sup>37</sup> For Helen, being unable to access legal advocacy prevented her from leaving her abusive partner, and she said that if lawyers offered 'achievable' payment plans 'I would have seen a lawyer five years ago'.<sup>38</sup> Yet because she was unable to secure Legal Aid and private lawyers required 'upfront [payment] and I couldn't afford it', she 'stayed an extra five years because I couldn't do anything'.<sup>39</sup> Moreover, Lola was

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<sup>28</sup> Advocate 25.

<sup>29</sup> Bridget Amelia Harris, *Just Spaces: Community Legal Centres as Places of Law* (PhD thesis, Monash University, 2013) 138.

<sup>30</sup> Survivor 17.

<sup>31</sup> Survivor 3.

<sup>32</sup> Survivor 2. See glossary, 189.

<sup>33</sup> Survivor 2.

<sup>34</sup> Survivor 3.

<sup>35</sup> Survivor 4.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

told that her case of non-physical abuse ‘wasn’t important enough to warrant Legal Aid so I had to pay for it myself’.<sup>40</sup> She was therefore forced to pursue an FVIO ‘all off my own back, I had no legal support’.<sup>41</sup>

CLCs, which are free, community-based legal services, emerged in Victoria in the 1970s in response to extensive unmet legal need, and they continue to provide a rich array of vital services despite being drastically under-resourced and underfunded. Both legal and non-legal workers at CLCs perform roles that extend beyond those of lawyers working in private practice or Legal Aid. CLC workers engage in casework delivery, legal outreach, community legal education and development, advocacy, law reform and policy.<sup>42</sup> CLCs are closely connected to government and non-government community organisations that provide services to and advocate for survivors of family violence. They have the capacity to support women through issues related to VOCAT, VCAT, debt, Centrelink, DHS and immigration and the array of legal problems that can arise out of family violence. CLCs assist those with unmet legal needs, including those who are not ‘Legally Aidable’ yet, given the great demand for their services, CLCs are not always able to assist women with all of their legal matters or if they have done so previously.<sup>43</sup> The CLC that assisted Amy, for example, was not able to help her with more than one matter. Workers ‘still gave me info [sic]’ on a second matter ‘but everything was vague’ and she ‘still had questions’ that were unanswered.<sup>44</sup> Although Georgia said that her session with a CLC lawyer ‘was quick coz [sic] it was busy’ she stressed that ‘he [the lawyer] did listen’ to and assist her.<sup>45</sup> Angela found CLC duty lawyers to be helpful yet also spoke of their heavy workload, which can impact on their connection to clients. She commented:

they’ve got so many cases, they’re in between cases and they don’t have the time to think about and go through what actually needs to happen. It’s more a process for them.<sup>46</sup>

The capacity of CLCs to better assist survivors of family violence in regional and rural locations has been hampered by changes to government funding which have meant community sector organisations are now required to meet resource-intensive accountability and risk management

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<sup>40</sup> Survivor 2.

<sup>41</sup> Ibid.

<sup>42</sup> See glossary, 187. CLCs were central in advocating for the first crimes family violence legislation in the 1980s and have continued to pursue police accountability on family violence issues since that time.

<sup>43</sup> Harris, *Just Spaces*, above n 29, part 5, 138.

<sup>44</sup> Survivor 14.

<sup>45</sup> Survivor 12.

<sup>46</sup> Survivor 6.

standards that are beyond the capacity of many small organisations. Consequently, many CLCs (particularly those in regional and rural areas) have collapsed, or been merged into or taken over by larger organisations, and so are now managed by or are a 'program' of generalist welfare organisations. There are benefits to a 'one-stop shop' model; survivors may receive holistic support from the welfare organisation and the profile of legal services in larger welfare organisations can be elevated. However, when CLCs are funded through these umbrella organisations:

difficulties can arise in both communicating the CLC vision and ensuring respect for the particular ethical and professional considerations which frame all legal practice. These difficulties will affect the day-to-day operations of a CLC and are worse when conflicts of interest between an organisation's different programs arise.<sup>47</sup>

When women are clients of CLC programs within generalist welfare organisations, conflicts of interest can result. A CLC lawyer whose auspice organisation provided family services and had a close relationship with DHS identified that 'as a CLC we can't do any work for women around [FV]IOs if DHS are involved, and that is a lot of women in our area'.<sup>48</sup>

The conflation of legal and welfare services can diminish the independence and accessibility of legal services and in rural and regional areas further shrink the limited options available to women. It also carries the risk of silencing the advocacy role of CLCs in critiquing government and government agencies. Stand-alone CLCs have a long history of advocacy and law reform, which has highlighted the shortcomings of underlying assumptions, policy and practice and resulted in effective systemic change.<sup>49</sup> When CLCs become part of larger welfare organisations, the funding priorities and risk management strategies of the parent organisation can often take priority such that voices that criticise government can be seen to create risk and jeopardise funding.<sup>50</sup>

Among the women who could not access free legal services, many discussed the often prohibitive cost of engaging private lawyers. Jemma's lawyer informed her of the cost of various communications – meeting in person, readings she sent and so forth – and the high expense associated with, as he requested, 'tell[ing] him what was happening', which she agreed 'was

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<sup>47</sup> Megan Blair and Bridget Harris, 'Just Spaces: Community Legal Centres as Levelling Places of Law,' (2012) 37:1 *Alternative Law Journal* 7-10, see 9.

<sup>48</sup> Advocate 27.

<sup>49</sup> Federation of Community Legal Centres Supplementary Submission, Productivity Commission Inquiry into Access to Justice Arrangements July 2014 p14 footnote 22

<sup>50</sup> The federal government has recently announced that CLC funding agreements will require that centres carry out no law reform or policy advocacy unless it is to submit to government inquiries or law reform bodies.

important'.<sup>51</sup> Like most survivors, the violence Jemma experienced persisted post-separation; 'it was so often, it [the costs of keeping her lawyer informed] spiralled out of control'.<sup>52</sup> When her lawyer left the branch she began meeting with another lawyer at the same firm 'so my costs went up again'.<sup>53</sup> Angela's abuser 'dragged it [the court proceedings] out' to the point where she could no longer afford legal representation. Speaking of the cost and energy she had expended, and the pressures involved in engaging in the process, Angela commented, 'I feel like I could almost live at the courthouse, I'm there so often'. It was, she said, 'eating up money ... time ... my physical ability to do anything'.<sup>54</sup>

Women were grateful when private practitioners offered flexible payment plans or reduced fees. Jane's lawyers accepted a contribution from Legal Aid and agreed to a payment plan. She said that they were 'amazing' and very available – 'like I can call them anytime' – as well as extremely supportive, because 'they back me 100 per cent'.<sup>55</sup> Bee believed that her lawyer 'had my best interests at heart' and 'was prepared not to overcharge me', providing instructions for her to submit documents at court herself; 'I was very happy with that', she enthused.<sup>56</sup> Macy's lawyer did not charge his full fees. 'He didn't even charge me for my third court hearing', she reported, telling her, '[y]ou need it more than me'.<sup>57</sup>

### ***Specialist family violence lawyers***

As the researchers previously noted in this report<sup>58</sup>, survivors greatly valued specialist family violence lawyers. Helen said that her specialist lawyer gave her 'advice which helped me through the court system', offering a presence that was 'compassionate but knowledgeable'.<sup>59</sup> Numerous survivors (including one CALD survivor) who were dissatisfied with or unable to finance or locate legal representation travelled to Melbourne to access Women's Legal Service Victoria (WLSV) and, uniformly, praised the workers with whom they met; Amy described them as 'wonderful'.<sup>60</sup> However, for survivors in regional and rural Victoria, the need to travel to Melbourne to attend WLSV was problematic. On this point, the organisation's 'Women Workers Lawyers' Skype

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<sup>51</sup> Survivor 1.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Survivor 6.

<sup>55</sup> Survivor 3.

<sup>56</sup> Survivor 9.

<sup>57</sup> Survivor 10.

<sup>58</sup> See 109-10 of this report.

<sup>59</sup> Survivor 4.

<sup>60</sup> Survivor 14.

project, discussed earlier in this report, does offer a means to overcome geographic and social isolation, by providing 'access to legal advice that women [in regional and rural Victoria] would otherwise never be able to have'.<sup>61</sup>

Another specialist family violence legal service, available to survivors outside metropolitan areas, is the Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria). Nationally, FVPLS was created in response to the high demand from ATSI survivors who did not access mainstream services and who could not access Aboriginal Legal Services because of conflict issues. FVPLS is located in rural and remote locations across Australia and provide critical, culturally safe and appropriate legal assistance, casework, counselling, outreach and court support to ATSI adult and children survivors of family violence, sexual abuse and sexual assault. Nationally FVPLS also engages in education, prevention and intervention initiatives and its casework informs its advocacy and lobbying work.

The environment provided by specialist services such as FVPLS is safe, comfortable and supportive. Like CLCs, FVPLS Victoria operates as a stand-alone service structured according to a collaborative, referral-based model. It maintains close links with ATSI family violence workers and refuges, as well as housing, counselling, drug and alcohol, and allied health services. It also has strong relationships with Victoria Police ACLOs and family violence liaison officers. All of these services give ATSI women ongoing support and community protection, which are essential adjuncts to the protection sought through the justice system. Stand-alone legal services rather than those housed within welfare agencies are important for women seeking legal assistance because there is no 'wrong door' if they have been dissatisfied with or are in conflict with welfare services in one-stop shop agencies. This issue is particularly important in rural and regional communities where there are fewer options for women. Again like CLCs, FVPLS (both in Victoria and nationally) have experienced extensive funding cuts which will impact on frontline service delivery. As other organisations (such as the National Aboriginal and Torres Strait Islander Legal Services) have highlighted, cuts to FVPLS will place greater pressure on other already overburdened and under-resourced agencies, some of which are themselves facing funding cuts. The repercussions of funding cuts for these types of organisations are thus wide-ranging and devastating.<sup>62</sup>

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<sup>61</sup> Advocate 25.

<sup>62</sup> The federal government has claimed that the cuts to FVPLS's funding will come from its policy and advocacy capacity; but FVPLS services have never been funded for this activity by the government. On this issue see also

During this study, the researchers heard of a community-based, independent feminist organisation – Emma House Domestic Violence Services (EHDVS) – that is an initiative operating out of Warrnambool Court. Under the initiative, most applicants who are not represented by police prosecutors in court are represented by a lawyer employed in house by EHDVS. EHDVS secured funding for a part-time lawyer from Legal Aid in 2012, after the closure of the local CLC. Workers at EHDVS negotiated a protocol between the court, police and the service whereby a fax is sent to EHDVS the day before the family violence court list is heard. This enables the service to make contact with women to determine whether they need assistance in court. Warrnambool Court has a streamlined approach such that on court days registrars do not call for matters until they are advised that EHDVS is ready to proceed. During this research it became apparent that many magistrates respect EHDVS and the lawyers and family violence workers associated with the program. This was further evidenced by the fact that magistrates also called on the EHDVS in-house lawyer to assist women who would otherwise appear in court unrepresented.

The EHDVS in-house lawyer takes on FVIO appearances and associated legal issues, including limited family law and Child Protection work. Women do not have to be supported by family violence workers at EHDVS in order to access the legal service; however, they are required to have a family violence risk assessment undertaken by EHDVS. Women see the lawyer at EHDVS in an environment that is familiar to them (as it is where they also see their caseworkers), safe and child friendly. And women who have cases on days on which the lawyer cannot attend are prepared beforehand by the lawyer and will have an EHDVS support worker attend court with them. Survivors expressed relief at being able to speak with a lawyer – the EHDVS lawyer – who understands family violence and its nuances, dynamics and impacts. Moreover, specialist family violence lawyers positively impact on women’s experiences at court, as Bella enthused:

It was great having a family violence lawyer there, who you have seen before. It makes you braver and less vulnerable.... My lawyer was so much better than his, she knew all the stuff and ran rings around his [her abuser’s] lawyer.<sup>63</sup>

As did family violence caseworkers, women expressed great satisfaction with the seamless and holistic service they received from EHDVS. There were benefits for survivors as well as EHDVS workers:

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Centre for Rural Regional Law and Justice, ‘Centre for Rural Regional Law and Justice Letter of Support for Family Violence Prevention Legal Services’ (Media Release, 28 August 2014).

<sup>63</sup> Survivor 18.

A great thing about having a lawyer in house is that you can get secondary consultations. So that if one of our family violence support workers has a question about child protection, tenancy, or parole we have someone who we can ask and get an answer from straight away. It is a more holistic approach.<sup>64</sup>

EHDVS workers also believed that having an in-house lawyer gave women in the region unfettered access to a family violence specialist, who only sees applicant women, because the EHDVS lawyer cannot be 'conflicted out' by men seeing all the lawyers in town.<sup>65</sup> EHDVS has established an arrangement with the Legal Aid in its region to ensure that respondents are represented. The EHDVS in-house legal service operates on funding which has been extended to June 2015 but without any guarantee of continuing past this date. When this expires this will create an enormous gap in services for women in the state's south-west region.

### ***Support services***

Support workers reported encountering challenges in their efforts to assist women who had experienced family violence. 'It [the abuse] can make them unwell', one focus group explained, and '[i]f they are so unwell it can be hard to work with them'.<sup>66</sup> Workers face the ongoing, daily challenges of working with survivors who have experienced significant trauma, with very limited resources. Additionally, workers identified the challenges involved when women have particular needs to be addressed, for instance, in regards to 'acquired brain injury, mental health, [or] disability support', requiring 'intensified specialised support' from a worker with a 'small caseload'. They identified the need for further resources in the women's and family violence support sectors as well as in other support sectors in order to offer the 'intensive support work that women need'.<sup>67</sup> As discussed earlier in this report, workers also faced geographic barriers – specifically, they were not always able to assist women residing outside their catchment area.<sup>68</sup> Yet support workers demonstrated great initiative and ingenuity in assisting women while operating with very limited resources.

Some survivors in this study located and contacted services themselves. A significant number were referred by people in their network (family or friends), Victoria Police or the Magistrates' Court. While we acknowledge that the survivor cohort interviewed for this project was accessed

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<sup>64</sup> Advocate 41.

<sup>65</sup> Advocate 24; Advocate 35.

<sup>66</sup> Workers 28.

<sup>67</sup> Advocates 28.

<sup>68</sup> See 58 of this report.

through women's and family violence support services, this would not necessarily bias their views of services. Overwhelmingly, survivors found their interactions with services to be positive and 'empowering'.<sup>69</sup> The validation and empathy offered by workers was valued. Workers were, Chloe said, 'understanding and patient' and 'help you to know your worth'.<sup>70</sup> Macy reported that workers were:

the first [people] I ever spoke to who validated what I was experiencing and kept saying, 'Yes, we're familiar with these behaviours, this is controlling, this is abusive'.<sup>71</sup>

Similarly, Samantha found that workers 'explain a lot to you and why it's happened, they understand it', which numerous survivors stressed was important because of a tendency for women to blame themselves for the abuse.<sup>72</sup> Earlier in this report, the researchers discussed women's complaints about police responses to FVIO breaches. In contrast, survivors noted that support workers assisted and encouraged them to report breaches. 'They [support workers] told me that even if there is a text message [breach] I need to go to the police and I need to get him breached', Bella said.<sup>73</sup> ATSI support workers affirmed that 'we advise that if he breaches, call the police'.<sup>74</sup> Macy spoke about how support workers advised her to collect evidence, 'to document any breaches'.<sup>75</sup> This advice was useful because, as Dawn affirmed and numerous other survivors agreed, '[p]olice gave me no ideas about collecting evidence re. [sic] breaches'.<sup>76</sup>

Workers offered holistic assistance, for instance, by directly providing access to or referrals for counselling services or legal advocacy for survivors and their children. Links to legal assistance were useful because, as some survivors noted, they would not otherwise have sought legal advice. Specialist family violence legal workers – who were based in services or CLCs, or who were CLC outreach workers – were highly regarded by survivors, both among those who saw only specialist legal workers and those who had previously had negative experiences with private legal practitioners or lawyers at legal advocacy services (CLCs or Legal Aid).

Workers also helped survivors to complete FVIOs, which was of great benefit to CALD survivors in particular, who are often not confident in their grasp of the GAE. It is, however, worth

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<sup>69</sup> Survivor 21.

<sup>70</sup> Ibid.

<sup>71</sup> Survivor 10.

<sup>72</sup> Survivor 11.

<sup>73</sup> Survivor 18.

<sup>74</sup> Advocates 28.

<sup>75</sup> Survivor 10.

<sup>76</sup> Survivor 29.

emphasising that survivors on the whole were apprehensive about completing court documents and valued worker assistance to do so. Helen, for instance, spoke of workers who ‘explained how to write the application’ and reassured her that ‘it was okay to have facts and also to talk about feelings’.<sup>77</sup> Workers ‘knew the system’, she explained, and so understood ‘how things should be placed so they were clear’.<sup>78</sup> On this issue, it should be acknowledged that workers recognised and understood non-physical forms of family violence which might not be seriously regarded by others, such as police, magistrates or private lawyers. Ingrid, for example, described her lawyer’s attempts to speak of the harms and effects of her psychological and financial abuse in physical terms – ‘he said that was add-on symptoms to the physical’ – but her support worker insisted that ‘no, the law is that they are individual things [forms of abuse]’.<sup>79</sup>

The presence of support workers at court, standing beside survivors, was appreciated; ‘her [the worker’s] presence in court was compassionate but knowledgeable’, one survivor enthused.<sup>80</sup> Angela associated her support worker’s presence with validation; it was ‘really good’ to have her at court, she explained, because ‘it was someone else who was on my side which I don’t feel like I’ve had’.<sup>81</sup> Bella believed that having a support worker with her made her feel ‘less vulnerable and braver’ in the courtroom.<sup>82</sup> Workers understood that women might feel anxious or fearful when encountering their abusers in or around court settings. Survivors recounted how, in addition to escorting women to their cars, workers organised separate waiting rooms for them. Workers from ATSI services explained that dedicated support at court was vital for ATSI women, who often have little trust in the court system and face complex layers of disadvantage and need. An ATSI survivor insisted that ‘women won’t go [to court] unless they are supported ... they will do it if they are supported’.<sup>83</sup>

Support workers assisted survivors to demystify the court process. ‘It was lucky she [the worker] was with me at court’, Katherine commented, because ‘otherwise I would have been sitting there thinking, “What is going on?”’<sup>84</sup> Workers thus had significant roles as advocates for women because of their knowledge about court processes. And survivors valued that workers are able to question the actions of police and magistrates in the court setting – particularly in regards to the

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<sup>77</sup> Survivor 4.

<sup>78</sup> Survivor 4.

<sup>79</sup> Survivor 8.

<sup>80</sup> Survivor 4.

<sup>81</sup> Survivor 6.

<sup>82</sup> Survivor 18.

<sup>83</sup> Survivor 17.

<sup>84</sup> Survivor 4.

pressure placed on survivors to accept an undertaking – and how they liaised between police and survivors. Most of the family violence services researchers consulted provided court support although they were not funded to do so.

### ***Men's Behaviour Change Programs***

Workers noted the worth and potential of Men's Behaviour Change Programs. As one lawyer commented, '[m]en need to be able to share their experiences without thinking that they are the bad guys'.<sup>85</sup> Some workers insisted that self-referrals were low and unsure of the program's effectiveness in their area because 'a lot them have done the program before', one focus group reported.<sup>86</sup> A survivor, recounting a conversation she had had with a worker, was also somewhat sceptical of the outcomes of Men's Behaviour Change Programs for her partner because 'she [the worker] said she found it just made them smarter, they learn techniques to be smart'.<sup>87</sup> The researchers stress that the criticism that some workers made of Men's Behaviour Change Programs is by no means universal, but specific to certain locations.

One lawyers was unsure of the suitability of Men's Behaviour Change Programs in rural areas, because:

A lot of men don't like it because it's group stuff and they don't want group discussions shared in particularly small communities.<sup>88</sup>

The researchers note that similar sentiments have been expressed in academic studies on family violence in rural Australia.<sup>89</sup> However, in the consultation phase of this research, a rural and individual as opposed to group focus of Men's Behaviour Change Programs was not supported by family violence workers in regional, rural and remote Australia or men's anti-violence organisations. Instead, lawyers, workers and agencies consulted for this research advocated for further funding and resourcing of Men's Behaviour Change Programs, including providing programs in areas where they are currently unavailable. In particular, workers felt that expansion of the program could allow for greater consideration of survivors, including a review of the impact of Men's Behaviour Change Programs on survivors, and increased referrals for survivors, especially in cases when program workers are concerned for their safety. Furthermore, additional

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<sup>85</sup> Advocates 32.

<sup>86</sup> Advocates 38.

<sup>87</sup> Survivor 8.

<sup>88</sup> Advocates 32.

<sup>89</sup> Wendt, *Domestic Violence in Rural Australia*, above n 23, part 1,150, 152.

resourcing could help to reduce the incidence of conflict of interest issues observed in some rural areas, when counsellors are engaged by both survivors and perpetrators.



## Part 6: Healthcare and human services responses to family violence, child welfare, child protection and parenting

### *Healthcare sector responses to family violence*

Since the late 1980s, the role of health professionals in addressing and responding to domestic violence has received growing attention.<sup>1</sup> Hegarty found that:

in spite of a lack of clarity about definitions, IPA [intimate partner abuse] is a very common, hidden problem for women attending clinical practice.<sup>2</sup>

It has been estimated that full-time Australian general practitioners (GPs) each week see between one and five women who have experienced family violence at some time in their lives, although patients may not present with any identifiable symptoms and '[g]eneral practitioners will often say that they do not see many patients who have suffered [such] violence'.<sup>3</sup> The majority of women facing domestic violence do not in fact disclose their abuse to health professionals, with studies indicating that lifetime disclosure rates fall between 18 and 37 per cent.<sup>4</sup> In addition to the barriers to women disclosing violence there are, Hegarty, Feder and Ramsay suggest, barriers that discourage GPs from asking about violence, including 'lack of provider education regarding partner abuse; lack of time; [and] lack of effective interventions'.<sup>5</sup> Women, however, are more likely to feel comfortable disclosing their abuse to GPs if asked about it in a non-judgemental and empathetic way.<sup>6</sup>

The Royal Australian College of General Practitioners has recently updated its *Abuse and Violence: Working with Our Patients in General Practice* manual.<sup>7</sup> In addition, the Australian Medical

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<sup>1</sup> Gwenneth Roberts, 'The History of Intimate Partner Abuse and Health Professionals: What Have We Inherited?' in Gwenneth Roberts, Kelsey Hegarty and Gene Feder (eds), *Intimate Partner Abuse and Health Professionals* (Churchill Livingstone, 2006) 3-18, 3, 12.

<sup>2</sup> Kelsey Hegarty, 'What is Intimate Partner Abuse and How Common is it?' in *ibid*, 19-40, 20, 36.

<sup>3</sup> *Ibid* and Kelsey L. Hegarty and Robert Bush, 'Prevalence and Associations of Partner Abuse in Women Attending General Practice: A Cross-sectional Survey,' (2002) 26:5 *Australian and New Zealand Journal of Public Health*, 437-442; Royal Australian College of General Practitioners, *Abuse and Violence: Working With Our Patients in General Practice* (The Royal Australian College of General Practitioners, 4<sup>th</sup> ed, 2014), 10.

<sup>4</sup> Kelsey Hegarty, Gene Feder and Jean Ramsay, 'Identification of Intimate Partner Abuse in Health Care Settings: Should Health Professionals be Screening?' in Roberts, Hegarty and Feder (eds) *Intimate Partner Abuse and Health Professionals*, above n 1, part 6, 79-92, 79, 81. On barriers to disclosure see 82.

<sup>5</sup> *Ibid*, 82, see also 83 and L. Kevin Hamberger and Mary Beth Phelan, *Domestic Violence Screening and Intervention in Medical and Healthcare Settings* (Springer Publishing Company Inc, 2004), 159-192.

<sup>6</sup> Eleanor Tan, Lorna O'Doherty and Kelsey Hegarty, 'GPs' Communication Skills: A Study into Women's Comfort to Disclose Intimate Partner Violence,' (2012) 41:7 *Australian Family Physician* 513-517.

<sup>7</sup> Royal Australian College of General Practitioners, *Abuse and Violence*, above n 3, part 6.

Association has acknowledged that '[t]he medical profession has key roles to play in early detection, intervention and provision of specialised treatment of those' affected by violence<sup>8</sup>, recently launching a GP Toolkit in conjunction with the Women's Legal Service (NSW), *When She Talks to You about the Violence: A Toolkit for GPs in NSW*. The Toolkit provides guidance on communicating with and assisting women who have experienced family violence, providing care and documenting injuries.<sup>9</sup>

Other guides have been produced to assist GPs to respond to family violence, including international consensus guidelines from DOJ<sup>10</sup> and the Victorian Community Council against Violence<sup>11</sup> (based on a kit developed by the Domestic Violence Resource Centre Victoria and Women's Health West).<sup>12</sup> These guides and kits offer information on forms of violence; possible presentations, signs and symptoms of abuse; assessment of and indicators in children and young people; possible barriers facing survivors; questions to ask women and suspected perpetrators; ways to respond to disclosure; how to assess safety issues; and how to document abuse.<sup>13</sup> The importance of offering referrals to specialist services, listening to women and validating their experiences, and stressing the unacceptability of violence is emphasised in all of these guides.<sup>14</sup>

In this study, survivors in regional and rural communities lamented that it is difficult to access health services – including GPs and counsellors – especially among women who do not drive. As noted earlier in this report, in regional and rural areas public transport networks are often limited

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<sup>8</sup> Australian Medical Association, *AMA Position Statement on Domestic Violence* (Australian Medical Association, 1998).

<sup>9</sup> Women's Legal Services NSW, *When She Talks to You about the Violence: A Toolkit for GPs in NSW* (Women's Legal Service, 2013). This updates and extends: Domestic Violence Advocacy Service NSW, Partnerships Against Domestic Violence Australian and Victim of Crime Grants Program NSW, *Identifying Family Violence: A Resource Kit for General Practitioners in New South Wales* (Domestic Violence Advocacy Service NSW, 1999).

<sup>10</sup> Department of Justice, *Management of the Whole Family when Intimate Partner Violence is Present: Guidelines for Primary Care Physicians* (Department of Justice, 2006); Angela Taft, Kelsey Hegarty and Gene Feder, 'Confronting Partner Violence in Families: New International Clinical Consensus Guidelines,' (2006) 185:10 *Medical Journal of Australia* 535-536.

<sup>11</sup> Royal Australian College of Australian Practitioners, *Abuse and Violence*, above n 3, part 6; Victorian Community Council Against Violence, *Identifying and Responding to Family Violence: A Guide for General Practitioners* (Victorian Community Council against Violence, 2004); Victorian Community Council on Crime and Violence, *Management of the Whole Family when Intimate Partner Violence is Present: Guidelines for Primary Care Physicians* (Department of Justice, 2006).

<sup>12</sup> DVRCV and Women's Health West, *Identifying Family Violence: A Resource Kit for General Practitioners in the Western Suburbs of Melbourne* (DVRCV and Women's Health West, 1999). See: <http://www.dvrcv.org.au/publications/books-and-reports/guide-for-general-practitioners>

<sup>13</sup> Royal Australian College of Australian Practitioners, *Abuse and Violence*, above n 3, part 6, 8-16.

<sup>14</sup> *Ibid*, 14. On the importance of validation see also: Gene Feder, Jean Ramsay and Mary Zachary, 'Clinician Responses to Women Experiencing Intimate Partner Abuse: What is the Evidence for Good Practice and Policy?' in Roberts, Hegarty and Feder, *Intimate Partner Abuse and Health Professionals*, above n 1, part 6, 93-110, 93, 98-99.

and fragmented and private transport (where available) is expensive.<sup>15</sup> Furthermore, GP turnover is high in some regional and rural locations. In some regions, GPs were said to visit for ‘three- or six-month stints’, during which time ‘you get to know a doctor and then they go’. And these GPs often had ‘no appreciation of family violence and [family violence] services’ in the area.<sup>16</sup>

Survivors had mixed experiences of disclosing their abuse to their GPs. Some described their doctors as supportive – validating their experiences and offering referrals to family violence services. Macy, for instance, found her GP to be ‘absolutely wonderful, validating ... incredibly supportive’.<sup>17</sup> Samantha appreciated her GP’s concern and encouragement to leave her abuser when:

she [my GP] actually said to me, ‘I don’t trust him at all’. She said, ‘You must get out of that house, you must go’.<sup>18</sup>

Some women reportedly seek health-related instead of police-based responses to family violence. One survivor recalled meeting another survivor at court who was seeking an FVIO:

She said, ‘I don’t turn up to the police anymore, I have to go straight to hospital’. I said, ‘Why is that?’ She said, ‘Last time I called the police, they said if you keep bothering us, we’ll take [your] baby away’. She has to be physically hurt and present at the hospital [in order to get assistance]; she can’t get protection [by the police].<sup>19</sup>

However, survivors were not always satisfied with their GP’s response to their disclosure. Heather was disappointed that she was not referred to a support service and felt that ‘he [the GP] basically said that I should put up with it [the abuse] and “manage” it’.<sup>20</sup> Some survivors were angered by the response of their family GP. Macy, for example, felt that her former family GP was assisting her abuser in attempts to discredit her and her allegations of abuse. She recalled:

he [the GP] would ring me directly after speaking to [my abuser], asking about my parents’ mental health history and my own mental state.... He’s a very controlling man as well.<sup>21</sup>

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<sup>15</sup> See 45-46 of this report.

<sup>16</sup> Advocate 24.

<sup>17</sup> Survivor 10.

<sup>18</sup> Survivor 11.

<sup>19</sup> Survivor 1.

<sup>20</sup> Survivor 25.

<sup>21</sup> Ibid.

Overall, survivors and workers in this study advocated for greater training for GPs around family violence, for GP to make referrals to support services more frequently, and for more information about family violence and relevant services to be provided in the form of pamphlets and posters at GP's offices. In relation to these recommendations, one service reported that they had not received any referrals from GPs for two years. One survivor, Heather maintained that '[GPs need] training, understanding and to offer referrals. You are not just going there to vent!'<sup>22</sup> Survivors and workers also believed that GPs ought to identify and acknowledge possible warning signs of abuse and to ensure that survivors have an opportunity to meet with them privately. This was thought to be particularly important for CALD women and women with disabilities. On this issue, Yvonne, a survivor with a disability, was frustrated that '[t]he doctor was not given the opportunity to speak with me alone!' – that is, without her carer, who was her abusive partner. She wanted her GP to consider the presence of her partner at her appointment as a possible indicator of abusive behaviour and to make an effort to speak with her alone.<sup>23</sup>

Some survivors were aggravated that, when disclosing their abuse, their GPs had not informed them that they were mandatory reporters. Legislation pertaining to mandatory reporting was introduced in Victoria in the early 1990s<sup>24</sup>, which stipulates that:

Doctors, nurses, midwives, teachers and principals, and police are specifically compelled to report [to DHS] if they believe on reasonable grounds that a child is in need of protection from physical and sexual abuse.<sup>25</sup>

Heather realised that her GP had issued a report to DHS on her case when she was contacted by Child Protection practitioners; '[t]hey said they couldn't say who told them but I went back in my mind about who I told and it was him [my GP]'.<sup>26</sup> She was still with her partner at the time and therefore was in a precarious situation because he suspected that she had disclosed her abuse and subsequently 'he [my partner] really cracked it'.<sup>27</sup> The researchers appreciate that reporters do not necessarily want to identify themselves as such and acknowledge the importance of maintaining confidentiality<sup>28</sup>, but survivors in this study stressed the danger they might face were

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<sup>22</sup> Survivor 25.

<sup>23</sup> Survivor 27.

<sup>24</sup> Chris Goddard, *Child Abuse and Child Protection* (Churchill Livingstone, 1996) 98-103.

<sup>25</sup> Department of Human Services, *Mandatory Reporting* (Department of Human Services, 2012) 1.

<sup>26</sup> Survivor 25.

<sup>27</sup> Ibid.

<sup>28</sup> See *Children, Youth and Families Act 2005* (Vic) sections 190,191; Department of Human Services, *Mandatory Reporting*, above n 25, part 6, 3.

they to remain with their abuser once their disclosure became known or suspected. Just as positive experiences with GPs can assist survivors to respond to their abuse, negative experiences can lead to a reluctance to disclose to and seek support from other sources. Heather, for example, had ‘been to the doctor since then [the Child Protection investigation] and haven’t been up front with him’.<sup>29</sup> The impact of her encounter with her GP was profound – it ‘had a significant impact on who I told later’.<sup>30</sup>

### ***Survivor experiences with counsellors***

Some survivors spoke of being unable to access family counselling services in their area ‘because they [the services] were all too busy’.<sup>31</sup> Teresa said that there were ‘no outreach services’ she could access without going through a nearby hospital; yet this was problematic because if she were to utilise services through the hospital she would have no privacy since her abuser was well known in their community.<sup>32</sup>

Survivors had mixed experiences with counsellors. Bron was satisfied with her counsellor, who suggested that she speak with police, but before she was ready to leave her partner ‘made sure I had credit on my phone and a tank of petrol’ in case she needed assistance.<sup>33</sup> Sunny, a CALD survivor, also had positive interactions with her counsellor, who had ‘given me lots of strategies’ to cope with the effects of her abuse.<sup>34</sup> Teresa’s sessions with her counsellor were less satisfying, at least initially. After she disclosed to her counsellor that she had experienced violence, he advised her to ‘work on that relationship’ and to ‘try and fix things’ with her abuser. However, after Teresa’s child ‘broke the silence [in sessions] the counsellor put all the pieces together’.<sup>35</sup> Aspects of Teresa’s story were not unique; a number of survivors reported feeling pressure from their counsellors to stay in relationships with their abusers and to assume responsibility for their abuser’s behaviour, regardless of whether this was the intention of the counsellor. Furthermore, complaints were made during this research about the capabilities of counsellors. Lola, for example, had what she described as ‘very frustrating’ sessions with her counsellor, whom she did not feel had adequate experience in responding to family violence.<sup>36</sup> Similarly, dissatisfied with

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<sup>29</sup> Survivor 25.

<sup>30</sup> Ibid.

<sup>31</sup> Survivor 23.

<sup>32</sup> Ibid.

<sup>33</sup> Survivor 30.

<sup>34</sup> Survivor 15.

<sup>35</sup> Survivor 23.

<sup>36</sup> Survivor 2.

her sessions, Ingrid asked her counsellor 'what training he'd had in family violence' and '[h]e said, "oh yeah it was part of my diploma"... 10 years ago'.<sup>37</sup> Describing her interactions with her counsellor, Ingrid explained that she was unhappy:

because it [the response] was more about my ex – he'd discount what I told him.... It was suddenly my fault and about me not being responsible for my part.... In a lot of ways, the work I did with him helped me in being stronger in myself, but in terms of spending all that time with someone and expecting them to continue being a support for me, it was devastating. It felt like a betrayal from this counsellor.<sup>38</sup>

It is beyond the scope of this research to offer broader assessments of counsellors in regional and rural Victoria and their interactions with survivors of family violence. Drawing on the comments of survivors, the researchers propose that further studies be undertaken that explore both the training of counsellors in regional and rural Victoria and the way that the barriers facing regional and rural women identified by the researchers (such as the notions of conservatism and constructs of gender) impact on counsellor responses to the disclosure of violence.

Generally, survivors found it difficult to locate ongoing counselling for their children who had experienced family violence. Worried about her child's behaviour when she returned from visits with her father, Jane tried to locate counselling for her daughter but 'the courts' told her that 'unless DHS back it, she's not to go to counselling'.<sup>39</sup> Jane had 'contacted DHS constantly' but claimed that she had received 'no assistance at all'.<sup>40</sup> A substantial barrier to locating counselling and therapy seemed to be the limited resources in both the government and family violence sectors. This is an issue state wide, but is exacerbated in regional, rural and remote areas, particularly in regards to specialist services. Ingrid was thrilled with art therapy, a support service provided for her daughter, who 'started building up trust and started opening up' to the worker running the therapy; but when the worker left and was not replaced the therapy was discontinued.<sup>41</sup> A further obstacle to securing counselling or therapy identified in this research is that these treatments have limited benefit or are not available in cases where the child is still exposed to their father's violence during visitation. These issues and challenges are discussed

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<sup>37</sup> Survivor 8.

<sup>38</sup> Ibid.

<sup>39</sup> Survivor 3.

<sup>40</sup> Ibid.

<sup>41</sup> Survivor 8.

below in relation to survivors seeking support for and formal responses to child sexual abuse allegedly committed by their abusers.

### ***Survivors and responses to child sexual abuse***

Research indicates that ‘child abuse and domestic violence do not stop following separation but continue afterwards’<sup>42</sup>, and that ‘children may be more vulnerable to sexual abuse in the context of separation or divorce’.<sup>43</sup> Indeed national and international research has revealed that there are connections between the incidence of intimate partner abuse and child sexual abuse.<sup>44</sup> Forman’s 1996 Scottish study, for instance, found that ‘wife abuse was a feature in a sample of child sexual abuse cases’, indicating that ‘where children are being sexually abused their mother may also be suffering from domestic violence’.<sup>45</sup> Research conducted in the Victorian context has likewise identified links between the incidence of domestic violence and child abuse<sup>46</sup> (and Australian studies suggest connections to child sexual abuse in particular).<sup>47</sup> In line with these findings, in this study, after escaping violence, approximately 13 per cent of survivors reported that their children had been sexually abused. These survivors noticed that their children were engaging in what they described as “inappropriate play” and making “inappropriate comments”. After speaking with their children, or following counselling sessions with their children, these survivors suspected that their children had been sexually assaulted by their former partners during their relationship and sometimes post-separation. In the present research, and as national and international studies have affirmed, children were vulnerable to abuse post-separation, either by

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<sup>42</sup> Thea Brown, ‘Child Abuse and Domestic Violence in the Context of Parental Separation and Divorce: New Models of Intervention’, in Cathy Humphreys and Nicky Stanley (eds) *Domestic Violence and Child Protection: Directions for Good Practice* (Jessica Kingsley Publishers, 2006) 155-168, 158.

<sup>43</sup> Maria Hume, ‘The Relationship Between Child Sexual Abuse, Domestic Violence and Separating Families’ (Paper presented at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference convened by the Australian Institute of Criminology, Adelaide 1-2 May 2003) 4.

<sup>44</sup> On this literature see, for instance: Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 11, 24, 83; Janette Forman, *Is there a Correlation Between Child Sexual Assault and Domestic Violence?* (Women’s Support Project, 1996) 5.

<sup>45</sup> Forman, *Is there a Correlation Between Child Sexual Assault and Domestic Violence?* above n 44, part 6, 6, 7.

<sup>46</sup> On this see: Adam M. Tomison, ‘Exploring Family Violence: Links Between Child Maltreatment and Domestic Violence,’ (2000) 13 *National Child Protection Clearinghouse Issues Paper*, Australian Institute of Family Studies 1-23, 2, 7.

<sup>47</sup> *Ibid*, 7. See also: Thea Brown et al., ‘Child Abuse and the Family Court,’ (1998) 91 *Trends and Issues in Crime and Criminal Justice* 1-6, 3-5; Chris R. Goddard, P.C. Hiller, ‘Child Sexual Abuse: Assault in a Violent Context,’ (1993) 28:1 *Australian Journal of Social Issues* 20-33; Adam M. Tomison, ‘Linking Child Abuse and Other Family Violence: Findings from a Case Tracking Study,’ (1995) 41 *Family Matters* 33-38; Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle - Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (Northern Territory Government, 2007) 116, 190, 221.

their abuser or another individual. In addition to being allegedly abused by her father, in this study one child was allegedly abused by a neighbour, post-separation.

Compounding the trauma that survivors and their children experience, women described encountering problems in locating ongoing counselling for their children who had been exposed to family violence and sexual abuse. Centre Against Sexual Assault (CASA) workers reportedly informed one woman that counselling would not be available or effective as long as her child maintained contact with her father. However, in this case charges had not been laid and so the child's father was able to maintain visitation. In this regard, international studies have asserted that, when sexual abuse has not been proven in court and 'women are faced with the access rights of fathers', the relationship between mother and child may also become adversely affected.<sup>48</sup>

In this research, women identified the difficulty in having their child's abuser formally charged by police. In one case, an abuser had not been charged because the child he allegedly assaulted was 'too frightened to do anything (about him or what he does)' and 'too scared to talk', and so had not 'made proper disclosure'.<sup>49</sup> In sessions with counsellors, the child identified that her abuser had threatened her mother's life if she spoke about the abuse. In other cases, survivors felt as though police officers or Child Protection practitioners did not believe the allegation or that it could be substantiated. Jane, for instance, recalled being told that there was not enough evidence for police to lay charges; '[t]heir exact words were "Who's going to believe the ramblings of a three year old?"'<sup>50</sup> She said that 'DHS [Child Protection] said the same thing' but were more receptive to her complaint after 'CASA approached them'.<sup>51</sup> Frustrated, she wondered, 'What's the difference between me telling them and someone else telling them?'<sup>52</sup> Angela was likewise disappointed by Child Protection findings regarding the credibility of her three year old and six year old. Child Protection practitioners reported that because there 'were slightly varying stories, they couldn't go further' with investigating the allegations that the children had been physically abused by their father.<sup>53</sup>

It appears that the accounts of Jane's and Angela's children were, at least in part, dismissed because of their ages. Interestingly, Brown and Alexander maintain that 'children as young as

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<sup>48</sup> Forman, *Is there a Correlation Between Child Sexual Assault and Domestic Violence?* above n 44, part 6, 16.

<sup>49</sup> Survivor 21.

<sup>50</sup> Survivor 3.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Survivor 6.

three can give clear accounts [of abuse] if approached properly'.<sup>54</sup> Survivors were confused by and ultimately frustrated with how police and practitioners judge the veracity of children's accounts. In Angela's case 'nothing ended up happening because one said slap, one said punch'; but she maintained that 'a hit or a punch – it's still not on' so she 'didn't understand why they couldn't go any further'.<sup>55</sup> Dawn felt as though there was a reluctance to give genuine consideration to her children's allegations because her abuser worked with children and was well known in their community. '[T]alking to the police [about her child's abuse] was really hard' because she 'felt with police that I was not being believed ... but it was not my allegation, it came from the counsellor'.<sup>56</sup> On this issue, Forman asserts that:

people (including professionals) are still very reluctant to believe that a 'nice', 'plausible', 'respectable' man, particularly one that they know, is a sex offender.<sup>57</sup>

National and international studies have dispelled myths that child sexual abuse allegations in the context of separation or divorce are 'vindictively and falsely made'.<sup>58</sup> As Brown and Alexander explain, in family separation situations 'allegations are no more likely to be false than allegations of child abuse raised in other contexts'.<sup>59</sup> Australian research indicates that, overwhelmingly, the majority of accusations are genuine, and only 9–12 per cent of allegations are false – figures that tally with international research.<sup>60</sup> The perception that 'malicious' mothers make false allegations is not only inaccurate but also dangerous, and can serve to 'misinform and mislead professionals in their approaches to the problem'.<sup>61</sup> Hume, writing in 2003, purports that:

Both the legal system and the child protection system continue the minimization and denial of her [a mother's] assertions of domestic violence and child sexual abuse, and she risks being labelled as uncooperative and vindictive ... by failing to recognize that there are legitimate and well-founded concerns about these forms of abuse occurring within

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<sup>54</sup> Thea Brown and Renata Alexander, *Child Abuse and Family Law: Understanding the Issues Facing Human Service and Legal Professionals* (Allen and Unwin, 2007) 75.

<sup>55</sup> Survivor 6.

<sup>56</sup> Survivor 29.

<sup>57</sup> Forman, *Is there a Correlation Between Child Sexual Assault and Domestic Violence?* above n 44, part 6, 28.

<sup>58</sup> Hume, 'The Relationship Between Child Sexual Abuse, Domestic Violence and Separating Families,' above n 43, part 6, 4.

<sup>59</sup> Brown and Alexander, *Child Abuse and Family Law*, above n 54, part 6, 8.

<sup>60</sup> Hume, 'The Relationship Between Child Sexual Abuse, Domestic Violence and Separating Families,' above n 43, part 6, 4. See also Thea Brown (ed), Margarita Frederico, Lesley Hewitt and Rosemary Sheehan, *The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia: A Report to the Criminology Research Council* (Monash University, 1997) 4, 8.

<sup>61</sup> Brown and Alexander, *Child Abuse and Family Law*, above n 54, part 6, 8. See also Hume, 'The Relationship Between Child Sexual Abuse, Domestic Violence and Separating Families,' above n 43, part 6, 10.

the separating family, both the child protection system and family law have failed to provide protection for women and children.<sup>62</sup>

Advocates have asserted that, given the connection between family violence and child abuse, there needs to be greater education of those involved with responding to this abuse and that, to reduce the risks to children, 'child protection workers need to be more closely involved in the management of domestic violence'.<sup>63</sup> Furthermore, international studies have insisted 'that by helping and supporting mothers, children will be supported'.<sup>64</sup>

The researchers acknowledge the continuing and evolving education that police and Child Protection practitioners receive, as well as their growing engagement with government and non-government agencies involved with assisting and advocating for survivors and their children. In recent years, responses to violence (family violence and child sexual abuse) have become increasingly holistic and practitioners have demonstrated greater awareness of the connection between family violence and child sexual abuse. Indeed, DHS's recent *Working with Families Where an Adult Is Violent: Best Interests Case Practice Model – Specialist Practice Resource* (hereafter, the *Working with Families Where an Adult Is Violent* resource) acknowledges this relationship.<sup>65</sup> Nonetheless, it is distressing that the trauma survivors and their children experience is not only associated with the incidence of sexual assault, but is also compounded by court-ordered (perpetrator) contact orders, state responses to the abuse, and difficulties around accessing support in its aftermath; difficulties which are likely exacerbated in regional and rural locations because of resource limitations as well as social and geographic isolation.

### ***Survivors' children and Child Protection***

Sometimes Child Protection practitioners<sup>66</sup> assisted survivors, like Kalia, to obtain FVIOs. On this relationship, Kalia remarked, 'DHS have always been good with me'.<sup>67</sup> In such cases workers indicated that women could be protected from their abuser's wrath because an external party had applied for the FVIO. DHS also provided a survivor whose abuser had attempted to kill her

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<sup>62</sup> Hume, 'The Relationship Between Child Sexual Abuse, Domestic Violence and Separating Families,' above n 43, part 6, 11.

<sup>63</sup> Tomison 'Exploring Family Violence: Links Between Child Maltreatment and Domestic Violence,' above n 45, part 6, 11.

<sup>64</sup> Forman, *Is there a Correlation Between Child Sexual Assault and Domestic Violence?* above n 44, part 6, 16. Forman, discusses Hooper's recommendations: Carol Ann Hooper, *Mothers Surviving Child Sexual Abuse* (Routledge, 1992).

<sup>65</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 11-12, quote 18.

<sup>66</sup> The term 'practitioners' refers to Child Protection practitioners, which is the preferred term used by DHS.

<sup>67</sup> Survivor 15.

with video surveillance for her house. Speaking to the benefits of Child Protection’s involvement in family violence cases, one lawyer noted that practitioners can help by ‘getting services for families who are looking to DHS for respite, to get priority listing’.<sup>68</sup>

Some workers framed survivor–practitioner interactions in less positive terms. One lawyer argued that it is problematic when women are under the misapprehension that ‘a [DHS] social worker is there to help them’ insofar as they could disclose information that results in practitioners ‘remov[ing] their kids without explaining very much’.<sup>69</sup> Moreover, instead of practitioners assisting women, one worker suggested that survivors sometimes sought FVIOs ‘as a result of pressure from Child Protection’.<sup>70</sup> Other workers agreed that ‘Child Protection often motivates women to report [family violence]’ and pursue FVIOs.<sup>71</sup> One lawyer found that young women in rural areas who experience family violence are unlikely to have parenting plans or orders<sup>72</sup> before they apply for FVIOs and that ‘it [shared parenting] was not a problem for them, until they started not tolerating the family violence’.<sup>73</sup> In such cases, this lawyer argued, ‘when police are involved’, it is the possibility that the children’s father might apply for to have the child primarily reside with them, or that Child Protection practitioners might remove their children that prompted them to apply for FVIOs.

On the whole, women (especially ATSI women) were apprehensive about having Child Protection practitioners involved in their lives. Fears that Child Protection would remove their children evidently prompted some women to formally respond to family violence. Yet it was suggested that women (ATSI women in particular) ‘fear[ed] that if there are breaches and women report them, Child Protection will remove their children’, and so the degree to which Child Protection serves as an impetus to formally respond to family violence is unclear.<sup>74</sup> In relation to such fears of child removal, the researchers note that this year the Victorian *Voices against Violence* project<sup>75</sup> found that some women with disabilities who had experienced violence:

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<sup>68</sup> Advocates 32.

<sup>69</sup> Ibid.

<sup>70</sup> Advocate 26.

<sup>71</sup> Ibid. Also spoken of by Survivor 25.

<sup>72</sup> See glossary, 189.

<sup>73</sup> Advocate 26.

<sup>74</sup> Survivor 25.

<sup>75</sup> This collaborative research project was completed by Women with Disabilities Victoria, the Office of the Public Advocate and the Domestic Violence Resource Centre Victoria. See papers 1-7 ( accessible from: <http://www.wdv.org.au/publications.htm>).

spoke of not telling anyone [about the violence] out of fear [that] their children would be removed, which is a fear that many women with disabilities who are experiencing violence share.<sup>76</sup>

As the authors of the report highlight, the national and international literature ‘shows that parents with disabilities have their children removed from their custody at high rates’.<sup>77</sup> There are perhaps also other groups that might be disproportionately affected by Child Protection investigations. A lawyer interviewed for this research claimed that when Child Protection practitioners apply for FVIOs on behalf of a survivor, the financial standing and resources of a survivor can influence the outcome of an investigation, because ‘if you are rich it will be a family law matter; if you are poor it will be a Child Protection matter’.<sup>78</sup> Workers spoke about the powers held by Child Protection practitioners. ‘Child Protection has more power than [the Australian] Federal Police’, one worker declared.<sup>79</sup> Practitioners can, workers maintained, determine access at the expense of other orders. Speaking to how this occurs in practice, one worker recalled a case where:

The abusive male rang Child Protection during an access visit, saying his son had a bruise on him. Child Protection left the kids with the man and overrode the [F]VIO and the family law order.<sup>80</sup>

Elsewhere advocates and researchers have discussed how, in the past, Child Protection responses to family violence have unwittingly contributed to a tendency to hold mothers accountable for their children’s experiences of family violence, while obscuring the role and responsibility of fathers.<sup>81</sup>

The researchers acknowledge and commend that family violence training for Child Protection practitioners has been developed by the DHS Office of Professional Practice, with content informed by the 2014 specialist practice resource *Working with Families Where an Adult Is*

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<sup>76</sup> Delanie Woodlock, Deborah Western and Philippa Bailey, *Voices against Violence: Paper 6: Raising Our Voices – Hearing from Women with Disabilities* (Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014) 45.

<sup>77</sup> Ibid, 50. On this issue see also: Parents with a Disability Community Network, *Our Forgotten Families*, above n 48, part 1, 14.

<sup>78</sup> Advocate 31.

<sup>79</sup> Advocate 1.

<sup>80</sup> Ibid.

<sup>81</sup> DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2, 39; Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 8, 18; Cathy Humphreys ‘Domestic Violence and Child Protection: Exploring the Role of Perpetrator Risk Assessments,’ (2007) 12:4 *Child and Family Social Work* 360-369.

*Violent*.<sup>82</sup> Rural-based training is included, and sensitivities regarding family violence in ATSI contexts are emphasised, both of which are important. In this study, ATSI support workers stressed the need for Child Protection practitioners to recognise the legacy of and trauma associated with the removal of ATSI children, the Stolen Generation, and the apprehension ATSI survivors may feel in relation to engaging with DHS.<sup>83</sup>

Vulnerabilities for survivors with disabilities and the anxiety and stigma associated with the involvement of Child Protection are also addressed in DHS training sessions, which were also featured in 2013 when Child Protection practice leaders and senior practitioners received training via the *Working with Parents with Learning Difficulties* program.<sup>84</sup> Such training is vital. As the Parents with a Disability Community Network has identified, '[a]cknowledgement of the trauma and grief created by involvement with the child protection system is not always given'.<sup>85</sup> Finally, the researchers recognise that between 2014 and 2015 more than twenty additional training sessions will be delivered in conjunction with the Men's Referral Service/No To Violence. This will include training to emphasise the role and responsibility of fathers, the importance of avoiding mother blaming<sup>86</sup> and ways to support mothers and mothering.<sup>87</sup> The researchers recognise the very significant contribution of the Men's Referral Service/No To Violence – praised by government and non-government stakeholders alike during consultation with researchers – which will undoubtedly benefit practitioners, survivors and support workers.

### ***'Good daddy and bad daddy'<sup>88</sup>: post-separation parenting***

Many of the survivors in this research who shared parenting with their abuser were agonised by the possibility that their children might still be exposed to violence. Women described feeling as though they were 'still living it [the violence] through the kids'.<sup>89</sup> When children wanted contact

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<sup>82</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1.

<sup>83</sup> On this issue see also: Stephanie Gilbert, 'The Effects of Colonisation on Aboriginal Families: Issues and Strategies for Child Welfare Policies' in Jan Mason (ed) *Child Welfare Policy: Critical Australian Perspectives* (Hale and Iremonger, 1993) 37-50; National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families* (Australian Human Rights Commission, 1997) especially: chapter 4 Victoria, part 3 Consequence of Removal, part 6 Contemporary Separations.

<sup>84</sup> Developed in response to a Victorian Ombudsman Inquiry and a report; the Parents with a Disability Community Network, *Our Forgotten Families*, above n 48, part 1.

<sup>85</sup> Parents with a Disability Community Network, *Our Forgotten Families*, above n 48, part 1, 18.

<sup>86</sup> See glossary, 189.

<sup>87</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 18, 20, 39.

<sup>88</sup> Survivor 29.

<sup>89</sup> Ibid.

with their father the situation was further complicated; survivors felt that their children were reluctant to discuss violence they experienced in case access to their father might then be restricted. Kelly's account illustrates how these issues and anxieties operate in play. She explained:

I want to protect the kids but the kids want to spend time with him. The kids speak of 'good daddy' and 'bad daddy' ... I feel like I have to do something ... I can see when they are covering for him. They have been threatened not to talk to me. I can tell when they come back to me [that something has happened because] they are quiet, subdued.<sup>90</sup>

Some survivors believed that their abuser's parenting and maintaining a relationship with their children was regarded by state agents (such as Child Protection practitioners, police and magistrates) as 'more important than protecting them'.<sup>91</sup> Their statements mirror Brown and Alexander's assertions that, in regards to the court system:

Contact is viewed as an almost inalienable right of the child, and it appears that the court will bend over backwards – even in the face of genuine allegations of child abuse – to ensure contact takes place.<sup>92</sup>

Victorian advocates have asserted that the primary objectives of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cwlth) (which emphasises the importance of a child maintaining meaningful relationships with both parents and protecting children from harm) are in conflict in the context of violence or abuse and that '[d]angerous consequences can flow from a pro-contact culture'.<sup>93</sup> Moreover, academic studies and, indeed, the recent *Working with Families Where an Adult Is Violent* resource kit have found that family violence and mothers' concerns about the influence and impact of this violence on their children have been somewhat overlooked in Australia.<sup>94</sup>

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<sup>90</sup> Ibid.

<sup>91</sup> Survivor 2.

<sup>92</sup> Brown and Alexander, *Child Abuse and Family Law*, above n 54, part 6, 45.

<sup>93</sup> Debbie Kirkwood, 'Behind Closed Doors: Family Dispute Resolution and Family Violence,' *Discussion Paper No. 6* (Domestic Violence and Incest Resource Centre, 2007) 12, DVRCV; *Bad Mothers and Invisible Fathers*, above n 51, part 2, 35, 36.

<sup>94</sup> Brown and Alexander, *Child Abuse and Family Law*, above n 54, part 6 ; DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2, 36; Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 26; Jeffrey L. Edleson, 'Responsible Mothers and Invisible Men: Child Protection in the Case of Adult Domestic Violence' (1998) 13:2 *Journal of Interpersonal Violence* 294-298; Amanda Shea Hart and Dale Bagwell, 'The Idealised Post Separation Family in Australian Family Law: A Dangerous Paradigm in Cases of Domestic Violence,' (2008) 14:2-3 *Journal of Family Studies* 291-309.

As previously affirmed in this report, survivors and workers believe that for some state respondents (police and magistrates) and lawyers, family law and family violence matters can become entwined and family law matters can take precedence over family violence.<sup>95</sup> Interviewees reported that some police, lawyers and magistrates believed that if the family law matters were settled first the family violence would stop and so this became the focus of negotiations rather than women and children's safety. Survivors and workers also maintained that police were reluctant to respond to technology-facilitated abuse if communication mentioned children, even if such communication constituted breaches and contravened FVIOs, because it was regarded as a 'family law' as opposed to family violence matter.<sup>96</sup> Angela's account illustrates how this can occur in the context of post-separation parenting, as the violence that she and her children experienced during contact 'changeovers' was disregarded because it was perceived to be a 'family law' matter. She recounted how her abuser 'tried to punch me during a changeover'; and she claimed that when she sought an FVIO for the fourth time following the incident, the magistrate was again reluctant to grant it because 'there's been family law orders involved. He says it's too difficult'.<sup>97</sup> In such situations survivors are 'caught in a catch 22' because, as Angela explained:

I want her to see her dad but I don't want to have to be put in a particularly hard position of being assaulted or verbally abused or [have abuse directed at] my older two children.<sup>98</sup>

Women reported feeling under pressure to share the parenting of their children, negotiate shared parenting in the context of ongoing hostility or violence, and assume responsibility for the volatile nature of their relationship with their abuser. 'They [the courts] look at it as fixing me or making me and my children put up with it rather than changing what he's doing', Lola insisted.<sup>99</sup> Yvonne was dismayed that Child Protection practitioners 'thought I had influenced the children' when they expressed concern at leaving their mother and spending time with their father.<sup>100</sup> In some cases where children were court ordered to see their father but did not want to, their mother became the target of their resentment and aggravation; '[t]he kids don't want to see their dad', Josie said, '[t]hey blame me, there's tears ... it leads to problems at home'.<sup>101</sup> The Domestic

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<sup>95</sup> See 70, 90-96 of this report.

<sup>96</sup> See 161-162 of this report.

<sup>97</sup> Survivor 6.

<sup>98</sup> Ibid.

<sup>99</sup> Survivor 2.

<sup>100</sup> Survivor 27.

<sup>101</sup> Survivor 7.

Violence Resource Centre Victoria and DHS have explored the ways in which mothering and the mother–child relationship can be affected, and highlighted that the topic has received relatively little attention to date.<sup>102</sup>

Women’s opposition to father–child contact, where such opposition exists, should not be understood as a desire to terminate this relationship but rather as a desire to protect their children. Indeed, women in this research were often eager and supportive of resumed contact once they were assured that their children would not be exposed to violence, as Katherine’s account illustrates. She asserted:

All in all, if my ex gets his stuff together and becomes a good dad for them, I’m more than happy and open to whatever.<sup>103</sup>

However, as Katherine noted, and as the researchers discussed earlier, magistrates can regard women’s reluctance for their children to maintain contact with their father or their desires to have their children listed on FVIOs not as arising out of genuine fear for their safety but as an attempt ‘to keep kids away from their father.’<sup>104</sup>

*[T]he fact that many women get fulfilment from and social affirmation from their role as mothers is well known to perpetrators of domestic violence, who may use that knowledge against women, directing their attacks towards this aspect of their partner’s life to undermine her identity as a mother and also the mother–child relationship. Further problems arise when those who work in the social and legal institutions which intervene in cases of domestic violence are also influenced by the view that women are predominantly responsible for their children’s wellbeing.*<sup>105</sup>

*Historically, child protection and family service workers have not been focused on placing men who perpetrate family violence as responsible and accountable for their effects on children’s safety, stability and development. This has been due to an understandable concern about not making things worse through unskilled attempts to engage perpetrators, but has also reflected societal patriarchal narratives where women are expected to be the main carers for children and men not expected to contribute as much. As a result, child protection casework has often failed to*

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<sup>102</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 31; DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2.

<sup>103</sup> Survivor 5.

<sup>104</sup> *Ibid*, see 94-95 of this report.

<sup>105</sup> DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2, 5.

*attempt to assess how perpetrator patterns of coercive control attempt to sabotage the mother–child bond, and reduce the capacity of the mother to parent, even though this assessment can often be done without engagement of the perpetrator.*

*Child protection and family service workers require training, and other forms of practice development support, to assist them to assess the perpetrators' impact on the mother's parenting capacity and the mother–child bond; to identify and build upon the mother's existing strengths in attempting to resist and maintain some dignity in the face of his violence, and in trying to keep her children safe; to safely and appropriately engage perpetrators towards at least some initial steps in responsibility-taking for their behaviour; and to work collaboratively with Men's Behaviour Change Programs to assess any changes in the man's capacity to be a safe parent, to treat the children's mother with respect rather than coercive control, and to support her relationship with her children.<sup>106</sup>*

### ***'Bad mothers', mother blaming and 'punishment'***

*[I]t is not an accident that abusive men attack women's abilities to mother; they know that this represents a source of positive identity, the thing above all else that women try to preserve, and also that it is an area of vulnerability.<sup>107</sup>*

*When a perpetrator has threatened to notify Child Protection or has seriously undermined a woman's confidence in her parenting, she might be worried that her children will be removed from her. This fear is particularly resonant for women who are Aboriginal, given the long history of forced child removals.<sup>108</sup>*

Survivors and workers reported that, in efforts to dissuade women from leaving the relationship or formally responding to family violence, some abusers accused women of being 'bad mothers' and threatened to make notifications to Child Protection or to assume primary parenting of their children. One lawyer commented that '[t]here is a fear of Child Protection, a fear of DHS', and abusers play on these fears:

Women are told by partners that they will be the ones to get the kids, not the woman. Often families say this too.<sup>109</sup>

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<sup>106</sup> Rodney Vlais, No To Violence, Submission to researchers (Vlais, 2014).

<sup>107</sup> Audrey Mullender et. al, *Children's Perspectives on Domestic Violence* (Sage Publications, 2002) 158.

<sup>108</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 34.

<sup>109</sup> Advocate 25.

Some survivors worried that their capacity to parent would be called into question – by others in their life as well as by Child Protection practitioners – because they had experienced family violence. Lola expressed how these issues and concerns affected her and her children:

At times I felt like I was at fault and I felt like if I said too much to the wrong person, my kids would be taken away. Because there's been times when I haven't been able to feed my kids or clothe them or do basic things for them because he hasn't supplied one cent. That's one of his things, the monetary aspect. But then he'll turn around and say, she doesn't feed the kids.... To have someone withdrawing their support then blaming me because I can't do something, is really hard emotionally, and you need to know you're not threatened by a third party as well. Authorities have said that can happen [that your children can be removed].<sup>110</sup>

Women and workers talked about the ways in which, post-separation, the abuser sought to destabilise a survivor's relationship with her children, admonishing and blaming her for leaving the relationship and formally responding to family violence. Dawn recounted how:

He told them [the kids] that they had ruined our relationship ... he said to them he wished he had never had them, that they had never been born.... And then other times he would say, 'Mummy is trying to keep you from Daddy' ... he has said that I turned his life upside down ... he told them that he would lose his job ... they wouldn't get presents ... he was having adult conversations with them and telling them, 'your Mum wants me arrested'.<sup>111</sup>

Similarly, Jemma reported that her abuser had made disparaging comments about her to her children – 'talking about how hopeless I am, how I can't do anything, [how] I'm a whore'.<sup>112</sup>

In addition to slating their ability to mother, it was not uncommon for abusers to persist in abusive behaviour or to withhold support in an effort to punish women or impact their ability to parent. Indeed, research affirms that, post-separation, moments of handover and child contact:

can be used by violent partners as a direct route through which to continually abuse the child's mother, such as by harming the child or by harassing, controlling and impoverishing the mother.<sup>113</sup>

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<sup>110</sup> Survivor 2.

<sup>111</sup> Survivor 29.

<sup>112</sup> Survivor 1.

<sup>113</sup> DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2, 10.

In this study, survivors recounted how their abusers returned children ‘with no shoes, no toys’<sup>114</sup>, or removed children’s items from their mother’s homes without permission: ‘her clothes, her backpack, you know, her favourite toys’.<sup>115</sup> Abusers sometimes did not ‘return them [children] as a form of punishment’<sup>116</sup>, or ‘didn’t return the kids for two or three hours as my punishment’.<sup>117</sup> In one case, a woman reported that her abuser, who ‘used my daughter to control me’, severely restricted her access to her child; ‘he would not let me take our daughter and would not let me see her for two months’.<sup>118</sup> She fought for visitation to her daughter but ‘sometimes he wouldn’t turn up’ at appointed times.<sup>119</sup> Worryingly, survivors alleged that, with the aim of revenge, some abusers threatened or sought to harm their children; one woman found poisonous materials placed on her daughter’s car seat on her daughter’s birthday. Survivors themselves also received death threats, and numerous women reported that their lives had been threatened in front of their children.

### ***Children as motivating responses to family violence***

Academic researchers have demonstrated that the aim of protecting their children can be a motivator for women to leave or stay in a relationship.<sup>120</sup> Practitioners (such as DHS workers)<sup>121</sup> have likewise recognised that ‘[w]omen’s decisions about staying or leaving frequently depend on what they think is in interests of their children’.<sup>122</sup> Concern that their children were experiencing violence through the violence inflicted on themselves or that perpetrators had begun directing violence at their children was, overwhelmingly, what typically prompted women to seek assistance, formally respond to family violence and/or leave their relationship. For example, one woman who had been experiencing violence decided to leave her partner and contact police to report her abuse, after she was assaulted in front of her son. Likewise, scared for the safety of herself and her children, and worried about the impact on her children, Macy called a family violence service and then, with her children, left her partner. She recalled:

I felt I couldn’t sleep with my back to him and my children were asking me if I wanted to be cremated or buried.... For me, kids are a barometer of what’s happening. If I tried to

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<sup>114</sup> Survivor 1.

<sup>115</sup> Survivor 3.

<sup>116</sup> Survivor 2.

<sup>117</sup> Survivor 2.

<sup>118</sup> Survivor 24.

<sup>119</sup> Ibid.

<sup>120</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 30.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

explain that to people they wouldn't understand, that my kids were asking me these things, completely out of the blue and I couldn't put a context to it.... My little one would come out and say 'I don't want to die' in a strange voice and it was awful ... I grabbed the kid's stuff and some of my clothes and packed in half an hour.<sup>123</sup>

Cassie also 'decided to talk because he [her abuser] started being violent towards the children'.<sup>124</sup> 'It was okay doing it to me but when it was my children I thought, game over', she asserted.<sup>125</sup>

Survivors' concerns for and efforts to protect their children were, without question, apparent in all of the sessions with the researchers. The women spoke of the volatile nature of their abusers and how this could impact on and endanger their children, and were angered when state agents – Child Protection practitioners, police and magistrates – failed to recognise this. More than solely a failure of justice, for women this represented a failure to protect survivors and their children. When a magistrate maintained that she had raised 'parenting matters not family violence' in her application for an FVIO, Macy told him that 'this is how things like the Farquharson dam case<sup>126</sup> happen, because you're not recognising the unpredictability that comes [with family violence and abusers]'.<sup>127</sup>

For survivors in this study, the safety and security of their children are paramount, and this typically determined whether or not they elected to respond formally to family violence. Research has indicated that mothers may decide not to leave an abusive partner because of anxiety that they will not be able to financially support their children or locate alternative housing, or because they might then be ostracised from social – family, friend or community – networks.<sup>128</sup> Moreover, women did not always report the violence they experienced to police or apply for an FVIO in a number of cases because they believed that it would jeopardise the safety of their children or themselves. The increased risks and dangers that women and their children face (being seriously injured or murdered) in the years after women separate from family violence abusers have been

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<sup>123</sup> Survivor 10.

<sup>124</sup> Survivor 28.

<sup>125</sup> Ibid.

<sup>126</sup> Macy refers to the conviction of Robert Farquharson for the murder of his three sons, who died after the car he was driving veered off the Princes Highway and into a dam. See *R v Farquharson* [2010] VSC 163; *R v Farquharson* [2010] VSC 177; *R v Farquharson* [2010] 26 VR 410 and Kirkwood, 'Just Say Goodbye', above n 105, part 4, 51-53.

<sup>127</sup> Survivor 10.

<sup>128</sup> DVRCV, *Bad Mothers and Invisible Fathers*, above n 51, part 2, 23.

illustrated throughout Australian studies, demonstrating that their fears are, sadly, not unfounded.<sup>129</sup>

Regardless of whether or not they were assisted by advocates, some survivors were reluctant to seek FVIOs because they were anxious about how their abuser might respond. Cassie was encouraged by CASA workers to apply for an FVIO but she did not because she 'was worried that the violence would escalate'. She feared for her children's safety, and her abuser was 'threatening me that if I left the children would be killed'.<sup>130</sup> In this vein, Lola disclosed that there were 'a huge number of times when I should have gone for [F]VIOs for things' but did not 'because I was scared or the kids were scared'.<sup>131</sup> As Amy's account indicates, and in line with women's fears, perpetrators do sometimes react negatively and forcefully to formal responses. Amy, fearing that an FVIO would trigger a violent reaction from her abuser, instead sought an interim order. She was angered when her abuser was mistakenly informed that she had sought an FVIO because '[i]t started World War 3.... If they'd told him it was an interim, it wouldn't have escalated so much'.<sup>132</sup> Prioritising the wellbeing of their children, some women did not formally respond to the violence because they believed that it is important to maintain the family unit. In such cases, women in this research spoke about how the violence they experienced had been normalised and directed at them rather than their children. As Keri explained:

If one of my children had been hurt it would have been different. I did not know what was happening to me was family violence. I wanted to keep the family together. I did not want to go down the same track as my parents.<sup>133</sup>

Given the importance survivors placed on the safety and security of their children and the great danger women and children face in the immediate period after leaving an abuser, the recent 'Failure to Protect' legislation (clause 4 of the Crimes Amendment [Protection of Children] Bill 2014 [Vic]) seems misguided at best, harmful at worst. Failure to protect legislation typically seeks to compel those entrusted with the parenting or care of a child to 'take action if they know or believe the child is being abused' but does not consider the ways in which parents or caregivers

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<sup>129</sup> See *ibid*, which lists these. See also Thea Brown and Daniel Tyson, 'An Abominable Crime: Filicide in the Context of Parental Separation and Divorce,' (2012) 37:4 *Children Australia*, 151-160; Kirkwood, 'Just Say Goodbye', above n 105, part 4, 5-8, 13, 32-34, 37-63; Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 26.

<sup>130</sup> Survivor 28.

<sup>131</sup> Survivor 2.

<sup>132</sup> Survivor 14.

<sup>133</sup> Survivor 17.

might decide not to formally respond to their abuser or escape violence in the best interests of their children.<sup>134</sup>

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<sup>134</sup> Women's Legal Service Victoria et al., *Submission to the Victorian Government in Response to the Discussion Paper on Proposed 'Failure to Protect' Laws*, above n 55, part 1.

## **Part 7: The nature and impacts of and responses to technology-facilitated abuse and stalking**

*'He left a violent, disgusting message on my phone'.<sup>1</sup>*

*'If he's breaching in the courtroom [by sending abusive text messages] ... there's no telling what he and his family will do. They were sending me and my mum nasty messages. Police rang him, then after my ex texted me saying "I know the police officer, he knows my family and he thinks you're a joke and this whole case is a joke".<sup>2</sup>*

*'And he texted me a single letter at a time and I put it all together and it read letter by letter 'URDEAD'.<sup>3</sup>*

*'He was going on Facebook.... He kept saying [in Facebook messages] "I know where you are". They [support workers] said to look for flags [that my safety and security was threatened] and it was psyching me out'.<sup>4</sup>*

*'He turned up once and I hid in the bathroom, and that would mean I'd have three or four days of horrendous messages.... There were a few other breaches. There was a time when he turned up at the house, we were sitting on the couch, he'd texted me and I hadn't answered. That's when it's bad because he's not getting what he wants'.<sup>5</sup>*

*'It was just at that moment when I had all the text messages to prove it, the abusive ones where he said he wanted to kill me and stuff like that, they still didn't listen'.<sup>6</sup>*

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<sup>1</sup> Survivor 19.

<sup>2</sup> Survivor 13.

<sup>3</sup> Survivor 17.

<sup>4</sup> Survivor 23.

<sup>5</sup> Survivor 1.

<sup>6</sup> Survivor 5.

*‘Survivors report that stalkers are using many forms of technology – old and new – to control, coerce and intimidate them during and after relationships.’<sup>7</sup>*

### ***Technology-facilitated abuse and stalking, and control***

During the consultations for this study, the researchers heard about the ways in which technology was used both by abusers in efforts to intimidate, control, harm or punish survivors, and by women who experience family violence to establish or maintain communication with family and friends and connect with advocates and emergency services. As Mason and Magnate observe, ‘new technologies complicate how women experience violence as well as how they are able to protect themselves’.<sup>8</sup> As the researchers earlier noted in this report, women in regional and rural areas who have experienced family violence spoke of their social and geographic isolation; for these women, technology can be used by abusers to extend or, by women and advocates to overcome this isolation.

There has been scant research that explores technology-facilitated abuse and technology-facilitated stalking, yet the research that has been undertaken indicates that such abuse is rapidly increasing and that the impact on women’s wellbeing, security and safety is great.<sup>9</sup> In the present study, survivors, for example, described the psychological effects (such as anxiety) and symptoms of trauma; ‘it could trigger me [to remember other forms and instances of abuse] and make me feel terrible’, Bella explained.<sup>10</sup> Elsewhere, research has identified the negative impacts of technology-facilitated violence and stalking on women’s health, wellbeing and sense of security, affecting all facets of their lives.<sup>11</sup>

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<sup>7</sup> Cindy Southworth et al., *A High-Tech Twist on Abuse: Technology, Intimate Partner Stalking and Advocacy* (Violence against Women Online Resources, 2005) 5.

<sup>8</sup> Corinne Mason and Shoshana Magnet, ‘Surveillance Studies and Violence against Women’ (2012) 10:2 *Surveillance & Society* 105-118, 107.

<sup>9</sup> Delanie Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project* (DVRCV, Collingwood: 2013).

<sup>10</sup> See also Hand, Chung and Peters, ‘The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation,’ above n 101, part 3, 1; T. K. Logan and Jennifer Cole, ‘The Impact of Partner Stalking on Mental Health and Protective Order Outcomes Over Time’ (2007) 22:5 *Violence and Victims* 546-562, 557.

<sup>11</sup> For instance: Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n .

Internationally, seminal work has been produced in the American<sup>12</sup> and Australian contexts – notably, the *SmartSafe* project undertaken by Woodlock at the Domestic Violence Resource Centre Victoria, which led to the introduction of practical training for support workers and publications that have contributed to worker and academic knowledge of and responses to this issue.<sup>13</sup> The value of this cannot be overstated. As Southworth et al. note, '[m]ost domestic violence advocates have had little or no training related to the use of technology as a component of intimate partner violence'.<sup>14</sup> Woodlock found that the use of technology by perpetrators to intimidate and control women was a significant concern for women and workers alike. Additionally, she reported that abusers use technology in attempts to socially isolate women from their support networks, monitor their location and communications, and cause them embarrassment and shame.

The current research offers a geographic perspective on technology-facilitated abuse and stalking – that is, the differing impacts on women living in regional and rural places. There are particular implications for women in regional and rural locations who experience these phenomena, in the form of increased danger and safety risks. In contrast to women in metropolitan locations they are more visible to their abuser and often under greater surveillance; have fewer transport options; are more likely to encounter homemade weapons and firearms; and have less access to support services, police and emergency assistance.<sup>15</sup> There has been no research on ATSI women's experiences of technology-facilitated abuse and stalking, yet, anecdotally, the researchers heard of ATSI women having their phones confiscated by police for use as evidence in family violence matters, thereby removing the women's means of calling for help.

The researchers maintain that technology-facilitated abuse and stalking should be understood as not separate from but part of and indeed inextricably intertwined with women's broader experiences of family violence.<sup>16</sup> The connection between forms of abuse was particularly clear

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<sup>12</sup> Such as: Jill P. Dimond, Casey Fiesler and Amy S. Bruckman, 'Domestic Violence and Information Technologies,' *Interacting with Computers* 29 (2011): 413-21; Cynthia Fraser et al., 'The New Age of Stalking: Technological Implications for Stalking,' (2010) 61:4 *Juvenile and Family Court Journal* 39-55; Mason and Magnet, 'Surveillance Studies and Violence against Women,' above n 8, part 7; Southworth et al., *A High-Tech Twist on Abuse*, above n 7, part 7.

<sup>13</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7. See also: Hand, Chung and Peters, 'The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation,' above n 101, part 3.

<sup>14</sup> Cindy Southworth et al., 'Intimate Partner Violence, Technology and Stalking,' (2007) 13:8 *Violence Against Women*, 842-56, 851-852.

<sup>15</sup> See 45-46, 49-56 of this report.

<sup>16</sup> On this see also: Dimond, Fiesler and Bruckman, 'Domestic Violence and Information Technologies,' above n 12, part 7, 418.

in Tina's account. She had experienced financial abuse and, post-separation, received abusive SMS messages referring to financial matters.<sup>17</sup> Nonetheless, it is vital to recognise that technology-facilitated abuse and stalking can impact on survivors in unique ways because of their spaceless nature. As Hand, Chung and Peters remark, with technology-facilitated abuse and stalking the 'concept of "feeling safe" from an abuser no longer has the same geographic and spatial boundaries it once did'.<sup>18</sup> Following separation, women can feel as though they do not have a safe space of their own, free from violence or harassment, and the prevalence of ICT use provides non-physical channels for abusers to further invade and violate women's safe havens. Women who have left their abuser and escaped violence are vulnerable to technology-facilitated abuse and stalking wherever they access their phone, tablet or computer. Women's frequent use of technology, most commonly their mobile phones, can, Woodlock asserts, enable 'a perpetrator [of technology-facilitated abuse or stalking] almost constant access to her life'.<sup>19</sup> Consequently, as Dimond, Fiesler and Bruckman remark, 'ICTs have changed the ways abuse impacts survivors long after the act of leaving'.<sup>20</sup> Furthermore, because technology offers a means for abusers to stay connected to and monitor survivors, it can 'pose not only a greater danger, but also provides a deterrent for some women who are considering leaving'.<sup>21</sup> As with other forms of violence (physical, sexual, emotional, psychological or financial), in the present study survivors reported experiencing technology-facilitated abuse and stalking while in their relationship and post-separation. However, this abuse and stalking seemed to significantly increase and intensify following separation. Fraser et al. agree that:

While it is not uncommon for an abuser to stalk before, during, and after a relationship, the stalking behavior commonly increases after a break-up.<sup>22</sup>

Such findings are in line with other research that demonstrates that 'the most dangerous point in an abusive relationship for a woman is when she tries to extricate herself from it'.<sup>23</sup>

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<sup>17</sup> Survivor 22

<sup>18</sup> Hand, Chung and Peters, 'The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation,' above n 101, part 3.

<sup>19</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 16.

<sup>20</sup> Dimond, Fiesler and Bruckman, 'Domestic Violence and Information Technologies,' above n 12, part 7, 420.

<sup>21</sup> Ibid, 413-414.

<sup>22</sup> Fraser et al., 'The New Age of Stalking,' above n 12, part 7, 50.

<sup>23</sup> Dimond, Fiesler and Bruckman, 'Domestic Violence and Information Technologies,' above n 12, part 7, 413.

Woodlock identifies numerous motivations for technology-facilitated abuse and stalking<sup>24</sup>, including ‘omnipresence’ (whereby a perpetrator seeks to ‘create the sense that they are present in every aspect of the victim’s life’) to ‘punish and humiliate’ (where a perpetrator draws on his knowledge of ‘his victim’s greatest fears, concerns and secrets’ to ‘punish, torment and humiliate her’).<sup>25</sup> Current or former intimate partners engaging in technology-facilitated stalking know their target and so, as Fraser et al. remark, they know ‘what will terrify the victim and how to increase the victim’s fear’.<sup>26</sup> Woodlock agrees that:

In partner stalking, seemingly innocuous behaviour can have a different meaning in the context of the relationship. For example, a perpetrator may text only once a week at a particular time, but it has specific meaning to the victim/survivor because of his intimate knowledge.<sup>27</sup>

The intent of technology-facilitated abuse and stalking is not dissimilar to or distinct from that associated with other forms of abuse experienced by family violence survivors; all are underpinned by notions of control, coercion and intimidation. As Southworth et al., writing on technology-facilitated stalking, explain:

While stalkers’ methods and choice of technology vary, survivors report that they are experiencing stalking and abuse that is perpetrated with a high-tech twist

as part of the stalker’s efforts ‘to control, coerce and intimidate them during and after relationships’.<sup>28</sup> DVRCV researchers have developed frameworks to examine technology-facilitated abuse and stalking in the context of other forms of family violence, using the concept of ‘coercive control’. Coercive control theory posits that strategies of control and intimidation such as isolation and surveillance – forms of and channels for abuse that are not traditionally associated with domestic or family violence – should be regarded as such, imbedded in and connected to traditional forms of abuse.<sup>29</sup>

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<sup>24</sup> Note, Woodlock uses a different terminology to that used by researchers in this study; she writes of technology-facilitated stalking, whereas (see glossary 190) researchers have made distinctions between technology-facilitated abuse and stalking.

<sup>25</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 17, 18.

<sup>26</sup> Fraser et al., ‘The New Age of Stalking,’ above n 12, part 7, 49.

<sup>27</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 16.

<sup>28</sup> Southworth et al., *A High-Tech Twist on Abuse*, above n 7, part 7, 3, 5.

<sup>29</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7.

## ***Normalisation of technology-facilitated abuse and stalking***

While the researchers stress that the women in this study identified technology-facilitated stalking and abuse as unwanted, invasive and dangerous, it is important to note that these women had escaped and formally responded to family violence. As discussed earlier in this report, many women talked about the ways in which, prior to separating from their partner, other forms of violence that they experienced had become normalised.<sup>30</sup> In considering that violence can, for some women, be normalised, in her *SmartSafe* report Woodlock's survey of workers revealed that many women did not identify technology-facilitated abuse or stalking as such '[b]ecause repeated contact can so closely model what we see as "romantic" behaviour'.<sup>31</sup> Indeed, in an American study over 35 per cent of teenagers reported that their partners used technology to track their behaviour or movements and that technology was used in intimate relationships to harass and abuse, indicating the extensive and insidious nature of technology-facilitated abuse and stalking in the lives of teenagers.<sup>32</sup> King-Ries warns that such behaviours are becoming increasingly normalised by teens, many of whom, he claims, are 'experiencing power and control patterns in their relationships through technology' and 'tend to believe that what is happening to themselves or their peers is normal'.<sup>33</sup> Similarly, Flood and Fergus contend that, in Australia, young people have normalised violence against women more broadly, because:

From a young age, all children and young people are exposed to an array of messages condoning discrimination and violence against women from a number of sources, including the media, pornography and 'macho' peer cultures in institutions from schools to sporting clubs.<sup>34</sup>

Such findings imply that young people are at risk of normalising abusive and violent behaviours. However, the average age of Woodlock's *SmartSafe* study participants was thirty-five:

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<sup>30</sup> See 40-41 of this report.

<sup>31</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 20.

<sup>32</sup> Peter Picard, *Tech Abuse in Teen Relationships Study* (Liz Claiborne Inc., 2007). See also Andrew, King-Ries, 'Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?' (2011) 20:2 *Texas Journal of Women and the Law* 131-164.

<sup>33</sup> King-Ries, 'Teens, Technology, and Cyberstalking,' above n 32, part 7, 155.

<sup>34</sup> Flood and Fergus for the White Ribbon Foundation, *An Assault on Our Future*, above n 54, part 2, 4 see also 25-27.

suggesting that, despite the widespread perception that technology-facilitated abuse is occurring amongst young people, our research shows that it is happening to older women too.<sup>35</sup>

To assume that it is only younger women who might normalise technology-facilitated abuse or stalking could therefore well be a flawed assertion. Rather, the researchers wish to flag that this violence can be normalised by persons from any age group and that this could be a barrier to women seeking assistance and support.

### ***Women's experiences of technology-facilitated abuse***

In line with the DVRCV's frameworks and the findings of national and international research<sup>36</sup>, in this study the overwhelming majority of survivors who experienced forms of family violence (physical, sexual, emotional, psychological or financial) also experienced technology-facilitated abuse. Most commonly, technology-facilitated abuse involved survivors receiving abusive SMS messages, voice calls and messages, and harassment via their social media profiles. Women remarked on the frequency and extent of the abuse they encountered; in many cases survivors were bombarded with SMS messages from their abusers. '[H]e'd text me constantly', Jemma recalled.<sup>37</sup> Yvonne received 'forty-two text messages in two hours. They were disgusting', she stressed.<sup>38</sup> Rohini received 'thirty texts a day from him [her abuser]', including while they were both present at court for a family violence matter.<sup>39</sup> Numerous abusers (or people in their social network) sent literally hundreds of SMS messages. It was not uncommon for abusers to commission people in their network (friends and family members) to perpetrate technology-facilitated abuse or stalking against a survivor.

Significant numbers of women received abusive phone calls and voicemail messages from their abuser or people they believed to be associated with him, yet they were not always able to prove the caller's identity, particularly when the caller was listed as 'private'. Several survivors reported receiving abusive phone calls from men they suspected to be their abuser, or associated with their abuser, impersonating police officers. The callers attempted to intimidate women and dissuade

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<sup>35</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 21.

<sup>36</sup> Ibid; and, for example: Dimond, Fiesler and Bruckman, 'Domestic Violence and Information Technologies,' above n 12, part 7, 416; Southworth et al., 'Intimate Partner Violence, Technology and Stalking,' above n 14, part 7, 842.

<sup>37</sup> Survivor 1.

<sup>38</sup> Survivor 27.

<sup>39</sup> Survivor 13.

them from pursuing formal responses to family violence. Angela recounted the call she received and the many agencies she had contacted in her efforts to hold the caller – who purported to be an Australian Federal Police officer – to account:

[the caller told] me I was in breach of our [FVIO] orders and I needed to stop and ‘We’ve been watching you for weeks’ ... I actually called up the local police and spoke to them, and they said, ‘Try the [Australian] Federal Police, we know there is a compliance department but it doesn’t sound like something they would actually get involved with’. And then when I spoke with people in the compliance department they said, ‘No, that’s a DHS thing, we wouldn’t get involved with that’. And the police said, ‘Oh no we can’t actually do anything about that because you don’t have phone records’, and I tried to get phone records and the phone company at the time said they didn’t do records.<sup>40</sup>

There thus seemed to be some confusion as to which agencies could and should respond to and assist Angela and, ultimately, she described feeling as though her abuser was not held to account for his behaviour. It was, she says, ‘yet another thing that he got away with’.<sup>41</sup>

### ***Women’s experiences of technology-facilitated stalking***

Survivors in this study talked about their abusers restricting and monitoring their use of technology. These behaviours occurred both during their relationship and post-separation. During her relationship, Yvonne’s abuser, for example, monitored her use to ICT in an effort to extend his control and socially isolate her from her support network; he ‘kept track of the phone bill and all the calls ... he would monitor all phone numbers’, she recalled and so she restricted her use of ICT.<sup>42</sup> Abusers reportedly reviewed survivors’ emails as well as their call, SMS and Internet histories and social media profiles. Macy knew that her abuser was reading her SMS messages and so when she ‘used the Internet to help me figure out how to get out safely’, she said she would ‘delete my browsing history ... I had to be very careful about what I was doing and deleting everything’.<sup>43</sup>

Abusers were also reported to have logged into survivors’ accounts and profiles; numerous women mentioned that their abusers had not only logged into their account but also changed their account information and passwords. In such instances it was often difficult for survivors to

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<sup>40</sup> Survivor 6.

<sup>41</sup> Ibid.

<sup>42</sup> Survivor 27.

<sup>43</sup> Survivor 10.

receive assistance from relevant businesses or institutions. One survivor had her university login information modified by her abuser, yet the university she attended did not assist her in resolving the issue. After separating from her abuser, another woman who 'did not change the locks straight away' soon discovered that her abuser had obtained records from her house and transferred her household accounts into his name. She 'rang the companies' in question and was informed that 'they could not talk to me because he had changed the authorities on the accounts'.<sup>44</sup> In another case, immediately after an interim order was issued, an abuser had a woman's 'mobile phone disconnected and put passwords on it [the account]'.<sup>45</sup> Her service provider was able to restore her services but her ex repeatedly had her phone disconnected and new passwords entered until she purchased a new SIM card. These situations were exasperating for women who, in addition to dealing with ongoing violence, had to contend with other matters associated with the dissolution of their relationship. They often invested time and effort without achieving any resolution of these issues.

The narratives of women who experienced technology-facilitated stalking (in particular, those who experienced this via and involving their social media profiles) affirm the need to recognise women have the right to form and leave relationships, as advocated earlier in this report.<sup>46</sup> Additionally, their stories highlight the dangers of technology-facilitated abuse and its connections to other forms of violence. This was apparent in Heather's and Rohini's stories. Heather recounted:

There had been a fella who contacted me on Facebook. My partner saw this (but he didn't see that I said to him I didn't want to see him) and he cracked it and threw me around. The police woman said, 'You shouldn't talk to guys on Facebook'. It felt like she was saying, 'You deserve it' but she was wrong. I wonder what she would have said about all the other times he hit me, but I wasn't quick enough to say, 'So, the last three years he has grabbed me around the throat and there was no "excuse"; was that okay?' ... The police woman sort of made me feel I was to blame.<sup>47</sup>

It was, Heather suggested, not only her abuser but also the police officer with whom she spoke who believed she was in some way culpable for the incident. During her conversation with the police officer her abuser's role in and responsibility for the technology-facilitated stalking and

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<sup>44</sup> Survivor 29.

<sup>45</sup> Survivor 12.

<sup>46</sup> See 42 of this report.

<sup>47</sup> Survivor 25.

associated violence was obscured by the officer. Her right to use and engage with others on social media (regardless of the fact that she had elected not to do so) was called into question. Women in this research who had appealed to their abusers to cease engaging in technology-facilitated abuse or stalking also worried that police would judge their decision to communicate with their abusers. Jemma, for example, felt that:

even the [abusive] messages I couldn't show the police because I'd responded, I'd had a conversation. So even though he's not allowed to contact me, I didn't feel like I could [inform the police].<sup>48</sup>

Like Heather, Rohini's abuser monitored her social media profiles. After she ended their relationship he hacked into her Facebook account and discovered that she had started a new relationship. He responded with verbal and physical abuse as well as threats to publish her private communications. She recalled:

He rang my mum, my sister and all my friends and told them I was having an affair and that's why I was leaving him.... [He also stole my phone and] he called me a whore etcetera and said he was going to publish the [explicit messages I sent to the new guy] and everyone was going to see them. He twisted my arm, I had bruises all down my arm, kicked me, pushed my head in the dirt and said, 'That's where you belong' and all that sort of stuff.<sup>49</sup>

Rohini's account supports Woodlock's research, which found that perpetrators frequently issue threats to 'publicly shame' women 'in front of their family and friends' and noted that there was a 'sexualised aspect of this abuse'.<sup>50</sup> Rohini's abuser also attempted to garner support and discredit her allegations of abuse *through* social media. He 'put all over Facebook that night about that "affair" I'd had and how I was a terrible mother'.<sup>51</sup> Her character and ability to mother were thus condemned in a public forum; 'everyone wrote on it [the post], saying, "we should get them"' and '[t]hey kept saying all these horrible things about what I was, what a horrible mother'.<sup>52</sup> She tried but was unsuccessful in having Facebook staff remove the comments from Facebook. Indeed, the extent to which companies who maintain social media platforms do (or more

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<sup>48</sup> Survivor 1.

<sup>49</sup> Survivor 13.

<sup>50</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 27.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

accurately do *not*) address technology-facilitated abuse and stalking is of great concern to survivors and advocate groups the world over.<sup>53</sup>

This study identified clear links between technology-facilitated abuse and traditional stalking.<sup>54</sup> Numerous survivors who received abusive SMS and social media messages reported that their abusers frequently visited their residences or places of work. Jemma, for instance, said that her abuser would ‘constantly drive into my driveway four times a day and beep’.<sup>55</sup> Links between technology-facilitated stalking and traditional stalking were also apparent. It was not uncommon for women to receive messages that indicated that they had been ‘under surveillance’ by their abuser or people in their abuser’s network. Rohini, for example, ‘had threats, him writing messages saying, “I know where you were last night, I had photos taken, you weren’t with the kids”’.<sup>56</sup> Furthermore, a number of women who were experiencing technology-facilitated abuse and stalking strongly suspected or had proof that their abuser had unlawfully entered their residence and taken items, or gathered information in order to extend their traditional stalking. In one case, an abuser sent an SMS message to a survivor notifying her that ‘he’d broken into the house and stolen my laptop’.<sup>57</sup> Such incidents were highly alarming and caused survivors to fear for their safety, particularly when they had secured FVIOs and relocated to what they hoped were safe and secure places. One woman who was living in a refuge after escaping violence received Facebook messages from her abuser claiming that he knew where she was staying.

Another significant and dangerous facet of technology-facilitated stalking identified by survivors in this study was the use of location-based technology to trace their movements and location. Most frequently this occurred after they had escaped violence. Reports from Eastern Community Legal Centre affirm that this is a concern for survivors of family violence in Victoria. Workers recounted that a survivor who had sought refuge at a friend’s house some distance away from

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<sup>53</sup> Association for Progressive Communication, *How Technology is Being Used to Perpetrate Violence Against Women – And to Fight it*, 3 (Accessible from <http://www.apc.org/en/system/files/How+Technology+is+Being+Used+to+Perpetrate+Violence+Against+Women+%E2%80%93+And+to+Fight+it.pdf>); J. S. M. Kee, *Cultivating Violence Through Technology? Exploring the Connections Between Violence Against Women and ICTs*, 35-36 (Accessible from: [http://www.genderit.org/sites/default/upload/VAW\\_ICT\\_EN.pdf](http://www.genderit.org/sites/default/upload/VAW_ICT_EN.pdf)).

<sup>54</sup> See glossary, 190.

<sup>55</sup> Survivor 1.

<sup>56</sup> Survivor 13.

<sup>57</sup> Survivor 1.

her home was located by her abuser, who logged into the family's MyKi online accountholder, viewed her travel history and thereby identified the suburb where she was temporarily staying.<sup>58</sup>

### ***Responding to technology-facilitated abuse and stalking***

*'There is the potential for non-physical acts of abuse through ICTs to be viewed as less serious than acts of physical violence ... it is crucial to understand these behaviours as occurring within a context of a range of other behaviours that, in total, are being used systematically by a perpetrator to control and undermine her'.<sup>59</sup>*

While the majority of survivors experienced technology-facilitated abuse and/or stalking it was rare that they felt this was adequately recognised and responded to by police and magistrates. Often survivors were savvy as to what records to keep. Mila recommended that 'it's good for court' if women 'make notes of incidents and text messages, [and] email stuff to yourself regarding incidents', so that 'it [the record] has the date etcetera and when it happened'.<sup>60</sup> However, a considerable barrier that was identified by women in this research was a lack of clarity and general confusion as to what evidence of technology-facilitated abuse and stalking is acknowledged and accepted by police (particularly in regards to breaches of FVIOs) or is admissible in court. Police officers told Jane to collect proof of the harassment she had experienced – '[t]hey said just take pictures, record telephone conversations' – yet when she brought the evidence she had gathered to court she was told it could not be used.<sup>61</sup> Likewise, Katherine had 'text messages ... the abusive ones when he said he wanted to kill me' that were not accepted by the court.<sup>62</sup>

In its *Code of Practice* Victoria Police does note that, '[d]epending on the circumstances, attending police may request ... specialised investigative assistance' for matters including '[s]talking, including by technology'.<sup>63</sup> It is not known how frequently specialised investigative assistance is utilised in family violence incidents or how often it might be required. Survivors in this study did not report

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<sup>58</sup> Workers recommend that 'women should register their persona Myki in their own online account. Agencies that support women should assist in the issuing of a new Myki and assist the opening of an online account'. Eastern Community Legal Centre, (2013) *Winter Eastern Community Law*, 3.

<sup>59</sup> Hand, Chung and Peters, 'The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation,' above n 101, part 3.

<sup>60</sup> Survivor 26.

<sup>61</sup> Survivor 3.

<sup>62</sup> Survivor 5.

<sup>63</sup> Victoria Police, *Code of Practice*, above n 33, part 1, 24.

receiving specialised investigative assistance. Generally, survivors felt that police officers were at best reluctant to acknowledge technology-facilitated abuse and stalking, and at worst dismissive of it. Rohini informed officers of the technology-facilitated abuse she had experienced and said that the 'police officer [with whom she spoke] took it very lightly'.<sup>64</sup> The officer told her that he would call the perpetrator to speak about the incidents 'and that'd give him a real fright'; however, her abuser later told her that he was familiar with an officer at the station she visited and that 'he knows my family and he thinks you're a joke and that this whole case is a joke'.<sup>65</sup> Chloe claimed that the officers she met were unconcerned about her reports of technology-facilitated abuse; she 'had text messages from him [her abuser] that the police wouldn't acknowledge'.<sup>66</sup> Similarly, Kelly said that '[p]olice have seen all his [abusive] messages and done nothing'<sup>67</sup>, and Georgia received over 480 abusive SMS and Facebook messages and claimed that police 'just fobbed it off'.<sup>68</sup> She had been told that officers would pursue the matter and arrest her abuser but she '[n]ever heard more about it', and she believed that '[t]hey don't want to deal with it'.<sup>69</sup> She was later told by officers from another police station that the officer with whom she initially spoke had not logged the matter into the police system.

Survivors claimed that their abusers frequently breached FVIOs by sending SMS messages. As noted previously in this report the researchers noted women's complaints that police had not adequately reacted to their abusers' breaches of FVIOs; and in discussing breaches associated with technology, women identified this as a significant problem. The researchers appreciate that in its recent *Working with Families Where an Adult Is Violent* publication, DHS has emphasised the dangers that such breaches represent because:

Multiple and persistent breaches [of FVIOs], even those that may at first appear 'low level' such as text messages, may be indicators of increasing risk. Case-based analysis suggests that perpetrators who continue to ruminate and be obsessed in their thinking with their partner may demonstrate this through numerous text messages and other forms of attempted contact. This is consistent with the evidence that stalking behaviour and obsessive thinking are highly related behaviours; stalkers are more likely to be violent if

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<sup>64</sup> Survivor 13.

<sup>65</sup> Ibid.

<sup>66</sup> Survivor 21.

<sup>67</sup> Survivor 20.

<sup>68</sup> Survivor 12.

<sup>69</sup> Ibid.

they have had an intimate relationship with the victim; and stalking, when coupled with physical assault, is strongly connected to murder or attempted murder.<sup>70</sup>

Internationally, research has affirmed that perpetrators who engage in stalking are more likely to breach court orders than those who engage in other forms of abuse.<sup>71</sup>

For Georgia, the lack of response to FVIO breaches enacted via technology was yet another indicator of the limitations of FVIOs and of the system. She explained:

The intervention order has definitely not made me feel safer. I've put locks on my doors, my neighbour put dow[el]s in the windows so you can't lift them up and open them. I've put spotlights in my backyard. I thought if someone breached an [FV]IO once, they were arrested and got into trouble. Not 480 texts later and still not in any trouble for it.<sup>72</sup>

Her statement echoes Woodlock's findings on women in Victoria who have experienced technology-facilitated stalking. Woodlock comments that women:

often did not feel that breaches of the [FVIO] intervention orders were taken seriously, particularly if they occurred using technology, such as via the [i]nternet and mobile phone.<sup>73</sup>

The incidence and impacts of technology-facilitated abuse and stalking, and their indication of possible risk – not only to women but also to children – were not always appreciated by magistrates. ATSI support workers recalled an incident when a woman had received a threat to kill via SMS message. Both parties – the applicant and respondent – consented to their children being included on an FVIO, yet 'the magistrate said as there was no threat to the children he would not include them on the order'.<sup>74</sup> Importantly, the *Working with Families Where an Adult Is Violent* resource identifies that threats issued to women or their children and '[s]evere and persistent stalking' – whether by technology or traditional means – are indicators of risk to survivors of family violence. In regards to filicide specifically, the resource acknowledges that

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<sup>70</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 50.

<sup>71</sup> Woodlock for DVRCV, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, above n 9, part 7, 32. See also Logan and Jennifer Cole, 'The Impact of Partner Stalking on Mental Health and Protective Order Outcomes Over Time,' above n 10, part 7.

<sup>72</sup> Survivor 12.

<sup>73</sup> Woodlock for DVRCV, above n 9, part 7, 32.

<sup>74</sup> Advocate 28.

‘indicators of risk that were not understood or were overlooked’ included ‘not identifying the seriousness of stalking behaviours, including technology-based stalking’.<sup>75</sup>

Survivors and workers alike observed a reluctance on the part of police and magistrates to respond to technology-facilitated abuse when children were mentioned in abusive messages. One lawyer maintained that if police officers ‘see the word “children” in a text message’ they ‘will tell the woman that it is a family law matter [as opposed to a family violence matter] even if it is a breach of the [FVIO] order to send a text at all’ in some cases.<sup>76</sup> Helen thought that the SMS messages she received from her abuser ‘was sort of breaching [the FVIO]’ because it ‘was not supposed to be about anything but the children’, but was unclear about whether this behaviour would be classified as a breach.<sup>77</sup> It is vital to clarify the terms of FVIOs in regards to acceptable communication, so that perpetrators are held to account for technology-facilitated abuse, and survivors are not subjected to unlawful communications and are aware of what constitutes an FVIO breach. It is worth noting that while some survivors chose to obtain new phone numbers in an effort to sever contact with their abuser, survivors with shared parenting agreements were unlikely to be able to avoid at least some degree of contact with their abuser. Consequently, they were further exposed to technology-facilitated abuse or stalking.

Survivors were angry when technology-facilitated abuse or stalking was not acknowledged by police or the court. ‘I felt like I wasn’t listened to’, Katherine explained, ‘even though I had proof there’.<sup>78</sup> Conversely, women valued any denouncement of technology-facilitated abuse and stalking by police officers or magistrates. One survivor, Bee, recalled witnessing the magistrate in the case before her responding to a ‘guy who was harassing his ex, sending multiple text messages and stuff’. Bee reported that:

She [the survivor] had transcripts of every single message, photocopies of phone records. It was a horrendous amount, it was blatant abuse.... The [magistrate] didn’t take any shit from the guy, didn’t accept his excuses.<sup>79</sup>

Bee was adamant that it is important that both she and her abuser witness a court of law condemning and prohibiting such behaviour.

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<sup>75</sup> Dwyer and Miller, *Working with Families Where an Adult is Violent*, above n 47, part 1, 85-86, quote 86.

<sup>76</sup> Advocate 25.

<sup>77</sup> Survivor 4.

<sup>78</sup> Survivor 5.

<sup>79</sup> Survivor 9.

This research affirmed the findings of the Victorian *SmartSafe* study, in regards to the impacts and effects of technology-facilitated abuse and stalking on women’s health, wellbeing and sense of security; and the correlation to and co-occurrence with other forms of violence and stalking.<sup>80</sup> For these reasons it is imperative that women, advocates and criminal justice agents appreciate the harm, risk and danger associated with technology-facilitated abuse and stalking; that these acts are examined in the context of women’s experiences of family violence; and that technology-facilitated stalking – like traditional forms of stalking – can escalate to physical (lethal or near lethal) violence.<sup>81</sup> It is also important to note, as Fraser et al. highlight, that women who are being stalked by intimate partners may not realise that they are under surveillance.<sup>82</sup>

Many survivors in this study believed that neither technology-facilitated stalking nor traditional stalking are seriously regarded by police and magistrates. Jemma, for instance, was disappointed by the response of police and magistrates to both forms of stalking that she experienced. Describing her experience of reporting her abuser’s frequent ‘drive-bys’ her house, she ‘got a letter’ from police ‘saying thank you for reporting, as discussed we can’t find enough evidence to breach him on this occasion’.<sup>83</sup> She lamented that ‘now he drives past my house constantly’ and claimed that the magistrate she appeared before supported his right to do so, asking, ‘Why can’t he drive past?’ The impact of such responses was a belief that ‘now he’s allowed to monitor me’.<sup>84</sup>

In this study and elsewhere, research has demonstrated that women who have experienced family violence are vulnerable to traditional stalking, and that there is a ‘clear link between stalking and intimate partner violence’.<sup>85</sup> Indeed, Dimond, Fiesler and Bruckman contend that:

Stalking and other forms of harassment have long been associated with domestic violence and can be exacerbated by the increasing prevalence of ICTs.<sup>86</sup>

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<sup>80</sup> Woodlock for DVRCV, above n 9, part 7. See also Dimond, Fiesler and Bruckman, ‘Domestic Violence and Information Technologies,’ above n 12, part 7, 416.

<sup>81</sup> Ibid 35; Dimond, Fiesler and Bruckman, ‘Domestic Violence and Information Technologies,’ above n 12, part 7, 413.

<sup>82</sup> Fraser et al., ‘The New Age of Stalking,’ above n 12, part 7, 50.

<sup>83</sup> Survivor 1.

<sup>84</sup> Survivor 1.

<sup>85</sup> Southworth et al., *A High-Tech Twist on Abuse*, above n 7, part 7, 3. See also Patricia Tjaden and Nancy Thoennes, *Extent, Nature and Consequence of Intimate Partner Violence: Findings from the National Violence against Women Survey* (U.S. Department of Justice, 1998).

<sup>86</sup> Dimond, Fiesler and Bruckman, ‘Domestic Violence and Information Technologies,’ above n 12, part 7, 413.

Stalkers are in fact more likely to be physically violent if they previously had an intimate relationship with the victim<sup>87</sup>; and Mason and Magnet maintain that ‘women stalked by former boyfriends, husbands or cohabitating partners are very likely to be physically, emotionally, and/or sexually assaulted by the same person’.<sup>88</sup> Alarming, McFarlane et al. assert that ‘when stalking occurs in conjunction with intimate partner violence, it may end in severe violence and/or possible femicide’.<sup>89</sup> They note that 76 per cent of femicide victims and 85 per cent of attempted femicide victims experienced stalking within a year of their actual or attempted murder.<sup>90</sup>

In the Australian context, cases involving the electronic surveillance of women by their partners or ex-partners have recently received media attention – most notably, the investigation, trial and sentencing of Simon Gittany for the murder of Lisa Cecilia Harnum, which revealed a series of highly invasive technologies and techniques used by Gittany to monitor Harnum’s movements. Gittany admitted to purchasing a computer program with the capacity to access Harnum’s SMS messages and it is likely that he was also able to review her emails.<sup>91</sup> Gittany denied that surveillance cameras (linked to recordings on Gittany’s computer) installed at their apartment were intended to capture Harnum; however, Justice Lucy McCallum had ‘no doubt’ that ‘[w]hether or not that was one of his original purposes of having the cameras installed’, Gittany was ‘using them for that purpose by the end of the relationship’.<sup>92</sup> Justice McCallum described Gittany as ‘controlling, dominating and at times abusive’<sup>93</sup>, and found that his ‘views as to the degree of surveillance and control a person is entitled to exercise over his or her partner are not to be attributed to an ordinary person’.<sup>94</sup> In the regional and rural context, this year a Victorian man received a four-and-a-half-year jail sentence for two charges of stalking and a single count each of aggravated burglary and threatening to inflict serious injury. The man had breached an FVIO, stalked (using both technology and traditional means) and harassed and threatened his former partner and her new partner.<sup>95</sup> These cases demonstrate the danger facing women who experience technology-facilitated stalking. Indeed, Harnum’s case resulted in her death. And in

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<sup>87</sup> Judith M. McFarlane et al., ‘Stalking and Intimate Partner Femicide,’ (1999) 3:4 *Homicide Studies*, 300-316, 302.

<sup>88</sup> Mason and Magnet, ‘Surveillance Studies and Violence against Women,’ above n 7, part 8, 107.

<sup>89</sup> McFarlane et al., ‘Stalking and Intimidate Partner Femicide,’ above n 87, part 7, 305.

<sup>90</sup> *Ibid*, 311.

<sup>91</sup> See, for instance *R v Gittany* (No 4) [2013] NSWSC 1737, 70-72, 259-260.

<sup>92</sup> *Ibid* 42, see also 34,444.

<sup>93</sup> *R v Gittany* (No 5) [2014] NSWSC 49, 8.

<sup>94</sup> *R v Gittany* [2013] above n 91, part 7, 500.

<sup>95</sup> See Matt Neal, ‘Jealously lands Grassmere man in Jail’ *The Standard* (Victoria) May 4 2013; Andrew Thomson, ‘Appeals Court to Review Stalker’s Sentence’ *The Standard* (Victoria) August 20 2014.

the other case cited, aside from the serious injury to which the woman and her partner were exposed, in her Victim Impact Statement the woman highlighted the lasting effects of the stalking: 'stress, vomiting, insomnia and paranoia' as well as being 'ostracised within the community'.<sup>96</sup> Neal, a journalist reporting on the case, noted that Judge Mark Gamble ruled that the perpetrator's actions represented a 'flagrant breach of the [FVIO] order' and that he had 'made the life' of his former partner 'a misery'.<sup>97</sup>

Faced with technology-facilitated abuse and stalking, and frequently frustrated with state responses to this violence, survivors sometimes elected to disengage from social media, change their contact information or purchase new hardware. Tina, for instance, changed her phone number and had her new number listed as silent.<sup>98</sup> Apart from the associated effort and expense required to disengage, such responses reveal how women who experience technology-facilitated abuse or stalking can feel pressured to limit or amend their use of technology. This can severely impact women in regional and rural Victoria, experiencing family violence and geographic or social isolation, because their engagement with their social network (friends and family) as well as family violence support networks is jeopardised.<sup>99</sup> Furthermore, disengagement is not necessarily a deterrent but can lead abusers to adopt other means to stalk, and some researchers believe that disengagement 'may increase the risk of physical violence for the victim'.<sup>100</sup> In Victoria and internationally, advocates have emphasised the importance of arming women who experience, and escape, violence with tools to empower themselves and protect themselves against technology-facilitated abuse and stalking, without promoting or expecting that women should disengage from such technology. This distinction is critical so that survivors know they are not to be held accountable for their abuser's behaviour. As Fraser et al. assert, 'technology is not the problem, the stalker's misuse of it is'.<sup>101</sup>

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<sup>96</sup> Neal, above n 95, part 7.

<sup>97</sup> Ibid.

<sup>98</sup> Survivor 22.

<sup>99</sup> See also: Dimond, Fiesler and Bruckman, 'Domestic Violence and Information Technologies,' above n 12, part 7, 416, 417-8, 420.

<sup>100</sup> Fraser et al., 'The New Age of Stalking,' above n 12, part 7, 53.

<sup>101</sup> Ibid.

## Part 8: Conclusion

Family violence, once regarded as a 'private' matter, is now understood to be a public concern, affecting one in three Australian women and more than one million Australian children. In fact, it has been regarded by some as a form of intimate terrorism, violating legal and social human rights. In addition to the fatal consequences of family violence, the health, wellbeing and security of survivors and their children are impacted and they are exposed to ongoing and long-lasting physical, emotional and psychological trauma. Speaking to the continuation and legacies of violence, survivors in this study explained that they had to associate with their abuser in the context of family violence and family law matters, and matters pertaining to the dissolution of their relationship and separation of assets, which impacted on their lives and recovery in a myriad of ways. The notion of 'escaping' violence was, in their narratives, not easily located, or at least not necessarily associated with ending a relationship or formally responding to violence.

Survivors talked about the pervasive and enduring role that violence has had on their lives. The majority of survivors had 'lifetime' experiences of violence – experiencing violence both as children and/or later, as adults, in one or more long-term relationships. Consequently, for many of these women violence is normalised, sometimes expected and, at the time, some felt it might be deserved. Women described their difficulty in recognising non-physical forms of violence as such, which is an issue they also identified in regards to police and court responses to violence, indicating that social perceptions and definitions of violence still need to be challenged. Indeed, survivors found a direct correlation among gender constructs, the subjugation of women and the perpetration and normalisation of violence against women in both public and private spaces. In overcoming and preventing violence, many women called for greater discussion of the nature of family violence and the assistance available to women in the public sphere, and for education and campaigns around challenging subjugation and society's acceptance of abuse.

Recent increases in the numbers of incidents and charges of family violence do not, in and of themselves, translate into increased incidents of family violence. That is not to say that the scale and incidence of family violence have been overestimated by any means, but we must recognise that extensive reforms of the criminal justice, health and welfare sectors have resulted in better understandings of and responses to family violence. However, there has been less focus on family violence in non-metropolitan areas. This report draws on and extends CRRLJ's 2013 family violence research, by exploring the experiences of and outcomes for women survivors in regional and rural Victoria, and in so doing, contributes to and enhances understandings of family violence

and its spatial variance. Appreciating that survivors, practitioners and government and non-government agencies have a wealth of knowledge and experience, this research utilised a rich primary data set combined with academic research to offer insight into the nature of family violence in regional and rural places and to develop strategies and recommendations for coordinated strategies to reduce its harms, impacts and incidence.

Government data as well as research produced by advocates and academics seem to suggest that there are higher rates of family violence in non-urban areas. Furthermore, as discussed in this report, regional and rural women who experience family violence encounter unique barriers to seeking assistance; and so it is possible, if not highly likely, that family violence in non-urban areas has been statistically underrepresented. As CRRLJ researchers have indicated in this and other CRRLJ studies, laws, legal processes, policies and resource allocations typically reflect the circumstances of cities, rather than those beyond the cityscape. This results in disadvantage and what has been termed ‘postcode justice’ – a term used to refer to spatial variations in justice system outcomes (that is, depending on the location of the offence, offender or criminal justice institution). As the researchers have demonstrated in this report, survivors of family violence in regional and rural areas encounter further inequalities in regards to access to and the outcomes produced not only by the justice system, but also by legal, family violence and healthcare services.

Academics and advocates agree that women in regional and rural locations who experience family violence face greater risk than women in metropolitan areas. They also encounter more barriers when escaping violence, and seeking assistance and access to justice. In this study, survivors spoke of geographic isolation – residing great distances from police, medical services, and informal and formal support networks – and of feeling as though they are constantly under surveillance on isolated farming properties. Their ability to move freely is hampered by limited and fragmented public transport networks and expensive private transport networks. It is not uncommon for abusers to restrict survivor access to family cars, which has particular consequences for survivors with disabilities. Social isolation was also identified as a disincentive to disclosing violence. Survivors spoke about the notion of conservatism – very much linked to the concepts of tradition and patriarchy – as fostering unequal power relations that position women as dependants and support the subjugation of women.

The concepts of community and social isolation can work to discourage survivors from seeking assistance in other ways. ATSI survivors and workers identified lateral violence and fear of abusive networks as well as shame, particularly when women are well known and respected, as

disincentives to disclosure. CALD women reported anxieties that they would be isolated from or victimised by their community if they sought formal responses to the violence they experienced. Living within predominantly Anglo-Australian communities, CALD survivors are both more visible and more invisible; the diversity and uniqueness of CALD communities is not always recognised or appreciated by non-CALD agents and agencies. Culturally appropriate services are less available in regional and rural locations, as are supports (such as Multicultural Liaison Officers and translators) to assist CALD women in accessing mainstream services.

The issue of visibility was a concern for all women in regional and rural locations. In small communities they and their abusers are more likely to be known to those they sought assistance from, and so confidentiality is tenuous at best. Survivors also talked about visibility in regards to their safety – being more visible to their abuser and people in their abuser’s network. On the subject of safety, survivors highlighted the covert and overt threats associated with firearms and homemade weapons, which are more likely to feature in rural than in metropolitan landscapes.

In addition to fears for their safety, women talked about financial constraints as influencing their decision to leave or stay with their abuser. And women in regional and rural areas have fewer opportunities in regards to education and employment, which can affect their financial status and security. Women involved in managing a family business (such as a farm) could feel under greater pressure to stay with their abuser, if leaving jeopardised the survival of the business – a problem further compounded by the effect this would have on later the life opportunities of their children. Indeed, for all survivors, the safety and security of their children were paramount, and critical in determining whether or not they would disclose violence, leave their abuser, contact police or pursue an FVIO.

Limited alternative and crisis accommodation in regional and rural areas is another significant barrier and culturally appropriate housing and housing for survivors or children with disabilities (and specialist support services) were even more difficult to locate. The scarcity of housing is by no means unique to regional and rural areas, but is certainly exacerbated in these places.

Those working in the family violence sector have demonstrated both an awareness of these barriers as well as innovative and effective strategies – such as the use of ICT – to overcome them. Using virtual spaceless zones to combat geographic and social isolation has great potential, offering channels for generalist and specialist legal and non-legal advocates to connect with survivors. As the researchers have discussed in this report, technology might also be used to a

greater extent by criminal justice agents. Yet, worryingly, it has been used by perpetrators in regional and rural Victoria against survivors. Invasive and spaceless, technology-facilitated abuse and stalking are new channels of violence that bring new challenges for survivors, advocates and criminal justice agencies. It is critical that we recognise the role of different place and spaces in exploring survivor experiences of, and responses to, family violence (not only criminal justice responses but also health, legal and family violence service responses). This report has contributed to the existing literature on these topics, drawing on the voices of survivors who are sometimes sidelined or silenced – not only in broader society, but also in responses to family violence – as well as that of advocates and practitioners who, working in overburdened and under-resourced agencies, do not always have the time or freedom to contribute to such analysis. A greater focus on the unique features, impacts and outcomes of family violence in regional and rural areas is necessary, so as to overcome barriers, boundaries and postcode (in)justice.

## Appendix A: Characteristics of a good family violence magistrate

*'[W]e must develop an increasing sensitivity on the part of all judge to the diverse human experiences which are presented to courts on a daily basis.'*<sup>102</sup>

The Judicial College of Victoria's *Framework of Judicial Abilities and Qualities* stipulates the knowledge, skills, behaviours and attitudes that the community is entitled to expect from the Victorian judiciary (and magistrates are included in this category) in performing their role.<sup>103</sup> Of particular relevance to family violence matters are the qualities of 'firmness without arrogance, courtesy, patience, tolerance, fairness, sensitivity, compassion and self discipline'.<sup>104</sup>

Interestingly, in the two *National Surveys of Australian Judges and Magistrates*, which looked at judicial attitudes and behaviours<sup>105</sup>, more women than men regarded courtesy, patience, compassion, empathy, sense of humour and managing the emotions of court users as essential to their judicial role.<sup>106</sup>

Based on our consultations, interviewees overall expressed the view that magistrates must have an appreciation of the harms of family violence and of how their tone, language and behaviour can affect a woman's experience of court, whether positively or negatively. The role that a survivor's sensitivities play and the impact of a magistrate's awareness were apparent in Helen's account. As she recounted:

the judge [magistrate] was compassionate so I was relaxed and listened probably better than I did the first time [I was in court]. I daresay if someone was really bashed or had a history of it, they'd probably be a lot more closed off as well, they'd need to be talked to in a much more compassionate way to understand, and to check they understand [what has happened in a hearing].<sup>107</sup>

Magistrates themselves saw benefit in training that explored the long-term legacies and impacts of family violence. One magistrate discussed how this imbued him with a perspective he had not previously had: '[i]t [the training] has been crucial to understanding the 24-hour-a-day

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<sup>102</sup> Justice McHugh in Ruth McColl, 'Judicial Appointment,' (2008) 30 *Sydney Law Review* 155-157, 157.

<sup>103</sup> Judicial College of Victoria, *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers* (Judicial College of Victoria, 2008) Available at: <http://www.judicialcollege.vic.edu.au/sites/default/files/2009JCVFramework-JCVsite.pdf>.

<sup>104</sup> *Ibid*, 8.

<sup>105</sup> Mack and Roach Anleu, 'In-court Judicial Behaviours, Gender and Legitimacy', above n 164, part 4, 734.

<sup>106</sup> *Ibid*, 736.

<sup>107</sup> Survivor 4

psychological impact of living in fear and the osmosis effect on the kids'.<sup>108</sup>

The manner in which magistrates ask questions of applicants in evidence about the violence they have experienced can be distressing for survivors. Traits such as compassion as well as training around family violence can reduce the trauma of the court process and enhance the quality of evidence that is provided by a survivor. Awareness of diversity is also vital; an ATSI family violence worker noted the value of the cultural education of magistrates, not only for the court processes but also in relation to the outcomes for women at court.

Lawyers also believed that it is important for magistrates to recognise the anxiety and pressures facing women when dates for hearings are not certain. In this vein, a lawyer recommended that magistrates direct respondents to secure legal advice so as not to postpone hearings, '[o]therwise the respondent keeps coming back saying he has no legal advice and it can't proceed'.<sup>109</sup> She maintained that '[m]agistrates need to be more savvy about this'.<sup>110</sup>

One family violence worker said that the litmus test for a good magistrate is their understanding of the notion of 'the manipulation of family violence' and how it features in the court process.<sup>111</sup> As previously highlighted in this report, lawyers and family violence workers described how men use adjournments to 'further control and abuse women' and to lawfully be near them.<sup>112</sup> An ATSI support worker offered an account of a magistrate who was aware of the ways in which perpetrators use court processes to see survivors, recalling:

I had arranged for the client to not come to court and the magistrate said that she could be excused from attending. The respondent had got his parole dispensed with to enable him to come up here for the application. But the magistrate was good because she knew that he was just using the application to try and see her.<sup>113</sup>

A survivor described how her former partner (who had been imprisoned for violence committed against her) had contested an FVIO in order for them to both appear in court. He had claimed that he did not pose a risk to her, and she recounted how the police officers she spoke with also did not believe that he represented a threat. She was relieved that the magistrate both refuted his claim and expressed disappointment that the police officers had not acknowledged this risk.

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<sup>108</sup> Magistrate 1.

<sup>109</sup> Advocates 32.

<sup>110</sup> Ibid.

<sup>111</sup> Advocate 24.

<sup>112</sup> Advocate 29.

<sup>113</sup> Advocates 28.

It is important that magistrates make eye contact with the parties in court. During our court observations, a magistrate, who made no eye contact with the respondent (a young man), was observed raising his voice increasingly at the young man, who was not answering his questions. The respondent's father shouted from the body of the court that his son had a hearing disability. The magistrate's failure to engage in eye contact with the respondent meant that he did not notice this problem. On the role of the magistrate and their need to engage with those before them, one worker said that in her experience:

it really makes a difference if the magistrate goes through the order very carefully, and asks the respondent and applicant if they understand it and make eye contact with them.<sup>114</sup>

### **Unacceptable judicial behaviour**

The representative and symbolic authority of a magistrate means that appearances in front of them can either be a powerfully positive or negative experience for women seeking the protection of the court. Complaints that the researchers heard about magistrates (from both women and workers) were not usually about the outcomes of the case, but rather the attitude of the magistrate. Magistrates who appeared disinterested in family violence 'make women feel like they are making a big fuss about nothing', one lawyer asserted.<sup>115</sup> The effect on women is profound; as a worker explained, '[w]omen I have worked with feel they are not important, that the magistrate can't be bothered [with their case]'.<sup>116</sup> Magistrates who women regarded as aggressive or, in the words of one lawyer, 'an ogre', could exacerbate the trauma associated with court processes, adding 'another layer of distress', and could result in disillusionment and dissatisfaction with the courts and the judicial system.<sup>117</sup> In this vein, one survivor described encountering a magistrate who she regarded as dismissive and aggressive, '[a] magistrate that is totally anti-woman, anti- [presiding over] family violence [matters]'.<sup>118</sup> She explained:

He kept telling me that he sees this [violence] every day. He kept telling me that we should patch it up. He was constantly telling me how many cases come before the court. It is very wrong that other women have to go to his court and get treated like flotsam and jetsam. I don't care about his personal attitude to women, intervention orders and family violence.

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<sup>114</sup> Advocate 35.

<sup>115</sup> Advocate 31.

<sup>116</sup> Advocate 35.

<sup>117</sup> Ibid.

<sup>118</sup> Survivor 28.

Each case needs to be seen on its own merits.<sup>119</sup>

In another case, the 'bullying behaviour' of a magistrate was raised, when he requested that a 'terrified' young woman give evidence.<sup>120</sup> The woman was 'frightened and inarticulate' and workers maintained that 'the magistrate abused her' and she consequently 'went to pieces'.<sup>121</sup> Numerous women, workers and lawyers identified a particular magistrate as problematic, describing how 'he yells at advocates and he yells at clients' and 'adjourns and won't come back for another hour'.<sup>122</sup> Essentially, such behaviours were said to 'replicate family violence'.<sup>123</sup> The researchers witnessed the same magistrate, who was the subject of many informal complaints, use language that was completely inappropriate in a family violence matter, such as telling parties that if they saw each other outside after they had left court they needed to 'think like they are in a boxing ring and stay in their corners'.<sup>124</sup> Such responses, workers said, 'reinforce the fear factor for a lot of women and the authority and dominance of the male', mirroring the abuse women experience in the home sphere; '[w]hen women come from controlling [male] behaviour it is a real trigger for them, it replicates controlling behaviour at home'.<sup>125</sup>

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<sup>119</sup> Ibid.

<sup>120</sup> Advocates 34.

<sup>121</sup> Ibid.

<sup>122</sup> Advocates 28.

<sup>123</sup> Ibid.

<sup>124</sup> As researchers noted during court observations.

<sup>125</sup> Advocates 35.

## Appendix B: Plain Language Statement



**TO:** Women participants

### Plain Language Statement

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Principal Researcher:** Dr Lucinda Jordan

**Associate Researcher:** Ms Lydia Phillips, Ms Kate Munro

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We are conducting a research project through the Centre for Rural Regional Law & Justice in the School of Law at Deakin University. Our research is examining the ways in which the courts and justice services respond to the needs of women in rural and regional Victoria who have experienced family violence. The Geelong Community Foundation has provided \$25,000 in funding for this project, the Alfred Felton Bequest has provided \$36,000 in funding and Deakin University is providing in-kind support.

We are interested in talking to women who have experienced family violence and who may or may not have used the courts or justice services to try to access justice, protection or safety. We obtained your information from your support service after you put your name down to participate in this project. This information sheet is for you to keep.

#### The purpose of the research

- 
- Document the experiences of women accessing the justice system in relation to family violence issues in rural and regional Victoria;
  - Assess the effectiveness of current justice system services in rural and regional Victoria in responding to the needs of women who have experienced family violence; and
  - Make recommendations to improve the responses of the courts and the justice system to the needs of women who have experienced family violence.
-

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### **Possible benefits**

It is expected that this research will benefit participants and the wider community by leading to a greater understanding of the needs of women survivors of family violence who seek to access justice and support. It is hoped the research will also lead to improvements in the justice system's response to the needs of women who have experienced family violence.

### **What does the research involve?**

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The research involves a semi-structured interview, which means we will ask you some questions that involve telling us in your own words about your experiences with the legal and justice system after experiencing family violence. With your permission, the interview will be audio-taped. Only members of the research team will have access to the audio-tape, which means no-one else can listen to it. If you do not want the interview to be audio-taped, that is OK - you can still participate in the interview.

The interview will take approximately half an hour.

You do not have to participate in this research if you do not wish to. If you choose not to participate, your decision will not affect your past, current or future relationship with the support service that referred you to our research or any other services associated with the research in any way.

### **Participation criteria**

To be involved in this research, you must be:

- 
- 18 years of age or over
  - Female
  - Linked in with a support worker
  - Have recently experienced family violence
- 

### **Can I withdraw from the research?**

Yes. If you agree to participate and then decide during the interview you no longer want to be involved, you can withdraw at any time during the interview. Please tell us you do not wish to continue. If you withdraw during the interview, we will not use any information you have provided to us in our project. Your withdrawal will not affect your past, current or future relationship with the support service that referred you to our research in any way and we will not tell anyone why you chose to withdraw.

After the interview, you may also request to see a transcript of your interview by contacting the Principal Researcher using the contact details below. If you wish, you may withdraw your information from the project, as long as this is within 6 weeks of your interview.

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## **Privacy and confidentiality**

All information you give us will remain confidential. However, if you choose to discuss issues regarding the current abuse of a child, we will ask your support worker to discuss these issues further with you.

During the interview and on the audio-tape, we will use a participant reference number to refer to you. This will allow us to access your information if you decide you would like to review your transcript. Any information we use in our research, report or published findings will not contain your name, the name of anybody else, the name of your town or community nor any information that would allow others to identify you.

## **Potential risks**

### Inconvenience or discomfort

We will ask you to talk about some of your experiences, particularly your experience of family violence and your experience of the police, the courts, lawyers, justice services and support services. Talking about these experiences may make you feel uncomfortable or upset. Please remember you do not have to answer a question if you do not want to. You may also ask for a break during the interview or stop the interview at any time. Similarly, if we become concerned that the interview is causing you undue distress we will stop the interview and will refer you to your support worker to discuss these matters further. If you feel upset after the interview, please talk to your support worker. A list of services you may wish to contact is also attached to this plain language statement for your information.

### Your identity

There is a small risk to some women living in small communities that information you give us might identify you, even when your name and identifying characteristics are removed. If you provide any specific information to us that you think would identify you to others, please tell us during the interview and we will remove that piece of information from our research.

## **Storage of data**

The data collected during our research will be stored on Deakin University premises in a locked cupboard or filing cabinet for six years. After this time, it will be destroyed. Our research findings or report may be published but as explained above, the identity of participants involved in the research will not be disclosed.

## **Monitoring the research**

Deakin University's ethics review panel will monitor this research project. We will liaise with support services and review the interview process based on anonymous feedback from participants. We will

also provide an annual report to the ethics review panel on the progress of the research. Deakin University will monitor and deal efficiently with any adverse events or complaints about the research or interview process.

## **Results**

The results of the research will be published in a report and may also be used in academic articles. If you would like to be informed of the final research findings for this project, please contact Lucinda Jordan on (03) 5227 2882 or [lucinda.jordan@deakin.edu.au](mailto:lucinda.jordan@deakin.edu.au). The findings will be available for six years.

## **Contact for more information**

If you have any questions or wish to discuss the project with the researchers, please contact the Principal Researcher:

Dr Lucinda Jordan

Centre for Rural Regional Law & Justice

Faculty of Business and Law Deakin University

Locked Bag 20000

Geelong Vic 3220

Phone: (03) 5227 2882

Email: [lucinda.jordan@deakin.edu.au](mailto:lucinda.jordan@deakin.edu.au).

## **Complaints**

If you have any complaints about any aspect of the project, the way it is being conducted or any questions about your rights as a research participant, then you may contact:

The Manager, Research Integrity, Deakin University, 221 Burwood Highway, Burwood Victoria 3125, Telephone: 9251 7129, Facsimile: 9244 6581; [research-ethics@deakin.edu.au](mailto:research-ethics@deakin.edu.au)

Please quote project number 2012-262.

## **Appendix C: Counselling services and supports**

Please speak to your support worker if the interview has brought up emotions or thoughts that are confusing or distressing. You may also wish to contact the following support services:

### **Centre Against Sexual Assault**

The Centre Against Sexual Assault offers free and confidential counselling services to people who have been victims of sexual assault and/or family violence. They have a 24 hour crisis service.

Telephone: 1800 806 292 (24 hour service)

Website: <http://www.casa.org.au>

### **WIRE**

WIRE offers a telephone support service to women. The service is run by women and they can offer information, support and referral services for a range of issues including anxiety and depression, fear, domestic violence, work and children.

Telephone: 1300 134 130

Hours: 9am – 5pm, Monday - Friday

Website: [www.wire.org.au](http://www.wire.org.au)

### **Lifeline Australia**

Lifeline offers a telephone counselling service to discuss a range of matters including physical and mental wellbeing, abuse and trauma, anxiety and depression. Calls to Lifeline are the cost of a local call. However, calls from mobiles, pay phones and some home phone plans may be more expensive.

Telephone: 13 11 14

Hours: 24 hours a day, every day

Website: [www.lifeline.org.au](http://www.lifeline.org.au)

### **Women's Legal Service Victoria**

Women's Legal Service Victoria provides free and confidential legal advice to women. The service specialises in violence against women and family law matters.

Telephone: 1800 133 302 (for country callers) or (03) 9642 0877

Hours: Telephone legal advice: Monday 10am-1pm; Tuesday and Thursday 6.30-8.30pm; Wednesday 2-5pm.

Website: [www.womenslegal.org.au](http://www.womenslegal.org.au)

**Aboriginal Family Violence Prevention and Legal Service Victoria**

ph. 1800 105 303 (not free to mobiles)

**Victorian Aboriginal Child Care Agency (VACCA)**

incorporating Aboriginal Child Specialist Advice and Support Services (Lakidjeka)

Ph. 03 8388 1855 (ask for regional number)

## Appendix D: Consent and withdrawal of consent forms



**TO: Women Participants**

<b>Consent Form</b>
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**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Reference Number:** 2012-262

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I have read, or have had read to me and I understand the attached Plain Language Statement.

I freely agree to participate in this project according to the conditions in the Plain Language Statement.

I have been given a copy of the Plain Language Statement and Consent Form to keep.

The researcher has agreed not to reveal my identity and personal details, including where information about this project is published, or presented in any public form.

I DO/ DO NOT give consent for my interview to be audio-taped.

Participant's Name (printed) .....

Signature ..... Date .....

**Please return this form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia



**PLAIN LANGUAGE STATEMENT AND CONSENT FORM**

**TO: Women Participants**

**Withdrawal of Consent Form**

*(To be used for participants who wish to withdraw from the project)*

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria

**Reference Number:** 2012-262

---

I hereby wish to WITHDRAW my consent to participate in the above research project and understand that such withdrawal WILL NOT jeopardise my relationship with Deakin University or the support service that referred me to this research in any way.

Participant's Name (printed) .....

Signature ..... Date .....

**Please mail or fax this form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia

Phone: (03) 5227 2882

Fax: (03) 5227 2151



**Organisational Consent Form**

*(To be used by organisational Heads providing consent for staff to be involved in research)*

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Reference Number:** 2012-262

I have read, or have had read to me and I understand the attached Plain Language Statement.

I give my permission for **staff members of** \_\_\_\_\_ to participate in this project according to the conditions in the Plain Language Statement.

I have been given a copy of the Plain Language Statement and Consent Form to keep.

The researcher has agreed not to reveal the participants' identities and personal details if information about this project is published or presented in any public form.

I agree that:

1. The institution/organisation MAY / MAY NOT be named in research publications or other publicity without prior agreement.
2. I / We DO / DO NOT require an opportunity to check the factual accuracy of the research findings related to the institution/organisation.
3. I / We EXPECT / DO NOT EXPECT to receive a copy of the research findings or publications.

Name of person giving consent (printed) .....

Signature ..... Date .....

**Please post your completed consent form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia



**PLAIN LANGUAGE STATEMENT AND CONSENT FORM**

**TO: Organisations**

**Withdrawal of Consent Form**

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Reference Number:** 2012-262

---

I hereby wish to WITHDRAW my consent for staff members of \_\_\_\_\_ to participate in the above research project and understand that such withdrawal WILL NOT jeopardise the organisation's relationship with Deakin University in any way.

Name (printed) .....

Signature ..... Date .....

**Please mail or fax this form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia

Phone: (03) 5227 2882

Fax: (03) 5227 2151



**PLAIN LANGUAGE STATEMENT AND CONSENT FORM**

**TO: Worker Participants**

**Consent Form**

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Reference Number:** 2012-262

I have read, or have had read to me and I understand the attached Plain Language Statement.

I freely agree to participate in this project according to the conditions in the Plain Language Statement.

I certify that I will only disclose information I am permitted by my employer to disclose.

I have been given a copy of the Plain Language Statement and Consent Form to keep.

The researcher has agreed not to reveal my identity and personal details, including where information about this project is published, or presented in any public form.

I DO/ DO NOT give consent for my interview to be audio-taped.

Participant's Name (printed) .....

Signature ..... Date .....

**Please return this form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia



**PLAIN LANGUAGE STATEMENT AND CONSENT FORM**

**TO: Worker Participants**

**Withdrawal of Consent Form**

*(To be used for participants who wish to withdraw from the project)*

**Date:**

**Full Project Title:** Improving access to justice for women and children survivors of family violence in rural and regional Victoria.

**Reference Number:** 2012-262

I hereby wish to WITHDRAW my consent to participate in the above research project and understand that such withdrawal WILL NOT jeopardise my relationship with Deakin University or my employer in any way.

Participant's Name (printed) .....

Signature ..... Date .....

**Please mail or fax this form to:**

Dr Lucinda Jordan  
Centre for Rural Regional Law & Justice  
School of Law, Deakin University  
Locked Bag 20000  
Geelong 3220 Victoria Australia

Phone: (03) 5227 2882

Fax: (03) 5227 2151

## Glossary

### ***Affected family member***

A person named in FVIO applications or safety notices. Also referred to as a protected person when an FVIO is issued.

### ***Applicant***

A person applying for a court order. In the case of an FVIO this can be an affected family member or a person who has the written consent of the affected family member, or a member of the police force. In the event that the affected family member is a child, the applicant can be the parent of the child or person with the written consent of the parent or with the permission of the court or, if the child in question is 14 years or older, with the permission of the court. If the affected family member has a guardian the guardian or any other person with the permission of the court can apply for the order.

### ***Base condition***

As outlined by the Family Violence Protection Act, section 81, the base conditions of FVIOs include:

- a) Prohibiting the respondent from committing family violence against the protected person; and
- b) Excluding the respondent from the protected person's residence in accordance with section 82 or 83; and
- c) Relating to the use of personal property in accordance with section 86; and
- d) Prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer or a specified person.

### ***CLC (community legal centre)***

Free, community-based legal services that emerged in Victoria in the 1970s in response to extensive unmet legal need. There are generalist and specialist CLCs, which continue to provide a rich array of vital services. Legal and non-legal workers at CLCs perform roles that extend beyond those of lawyers working in private practices or Legal Aid, engaging in casework delivery, outreach, community education and development, advocacy, law reform and policy. CLCs are closely connected to government and non-government community organisations that provide services to and advocate for survivors of family violence.

### ***Cross-application***

Cross-applications occur where, for example, a woman has made an application for an FVIO and then the respondent has replied by making his own intervention order application against her. Cross-applications can also be made by police when they have not been able to establish the identity of the primary aggressor.

### ***Exclusion Order***

A court order that restricts respondents from residing in or entering premises.

### ***Family violence***

The term 'family violence' has been used in this report to refer to violence in relationships, involving not only intimate partner relationships but also more broadly other members of a family structure. Victorian women's support services and the legislation *Family Violence Protection Act 2008* (Vic) use this term as it is understood to be a more inclusive term than 'domestic violence', which typically refers to violence between intimate partners. The researchers acknowledge that for ATSI communities the term has a further meaning, referring to more expansive forms of abuse – including physical, emotional, spiritual, cultural, social, sexual and economic abuse – that can occur within intimate relationships, familial structures, extended families, communities and kinship networks, and should be understood in the context of colonialism and its continuing impacts.

### ***FVIO (Family Violence Intervention Order)***

Under the *Family Violence Protection Act 2008* (Vic) survivors can apply for an FVIO which aims to ensure the safety of the affected family member and preserve their property and protect children exposed to and experiencing family violence. FVIOs are made under Victorian law and issued by magistrates' courts, and prohibit the respondent from perpetrating family violence against or behaving offensively towards the protected person (the applicant); approaching a protected person; attending the location where the protected person resides, works or frequents; being at a particular location; following the protected person; contacting or communicating with the protect person; damaging property owned by the protected person; holding a firearms licence; or arranging for another person to commit the acts that the respondent is prohibited from committing. There can be additional conditions attached to an FVIO.

### ***ICT (information communication technology)***

Technology utilised for the purposes of communication. Such technology includes telephonic functions (voice calls or voicemail messages made and received with 'landline' or mobile telephones and Standard Messaging Systems – better known as 'SMS' or 'text' messages) or messages or posts made on or through the Internet (websites or email accounts), applications or social media sites and platforms (such as 'Twitter', 'Facebook' and 'MySpace').

### ***Intergenerational trauma***

Intergenerational trauma is a form of historical trauma that is transmitted across generations. It is the trauma that is transferred from the first generation of survivors that directly experienced or witnessed traumatic events to the second and further generations. The removal of children from ATSI families is both an historical trauma and one continuing today.

### ***Interim Order***

An order made by a court until another or final order is made.

### ***Intimate Terrorism***

This term, coined by sociologist Michael Johnson in the 1990s, refers to perpetrator use of violence in attempts to exert general control over a survivor.

### ***Lateral violence***

Also known as horizontal violence, this phenomenon refers to a number of individuals working together to undermine, attack or target an individual, family or another group. This may involve a range of behaviours such as gossiping, bullying, harassing, shaming, social exclusion, organised

conflict or physical violence. Lateral violence is a product of social, cultural and historical dynamics and stems from oppression such as that associated with the processes of colonialism.

***Legal Aid (Victoria, elsewhere also referred to as Victoria Legal Aid or VLA)***

The Legal Aid Commission of Victoria – today known as Victoria Legal Aid – began operations in 1981, providing advice and representation as well as performing educative and advisory roles. Clients eligible for Legal Aid must satisfy a means test. Legal Aid is an independent body, funded by Commonwealth and state governments.

***Men’s Behaviour Change Programs***

These programs comprise the main forms of service available for men who use violence and controlling behaviour with a current or former partner, with participants who self-refer, are referred by others or are mandated to attend. The programs involve one or more groups in which men engage in practices and processes designed to encourage them to take responsibility for their use of violent and controlling behaviour, and to change these behaviours. In certain situations, resources permitting, programs may also include individual sessions and sessions with partners and ex-partners. Men’s Behaviour Change Programs are premised on two notions: first, the right of women and children to live freely and safely; and second, that men who deny this right must take responsibility for their actions and choose to change.

***Mother blaming***

Governed by sexual bias, this phenomenon considers a mother’s role in and contributions to her children’s maltreatment and maladjustment, while ignoring the role in and contribution of the father. In the context of family violence, mother blaming discourse operates to hold mothers primarily accountable for violence or the effects of violence their children experience while obscuring the accountability of an abusive father.

***Parenting Plan***

An agreement that separated parents make about how their children will be cared for and supported.

***Parenting Order***

A court order that sets out particular responsibilities regarding children.

***Protected person***

An affected family member named in an FVIO.

***Regional and rural***

There is no standard measure for differentiating between various location types; researchers have made distinctions based on demographic and social definitions and been guided by the ARIA + (Accessibility / Remoteness Index of Australia Plus) scores by postcode, as a geographic approach to defining locations by type and remoteness.

***Self-executing order***

An order made by a court without the respondent appearing.

### ***Support services***

In the context of this report, the term ‘support services’ or ‘services’ has been used to refer to women’s and family violence support services. The term ‘worker’ has been used to refer to workers at these services.

### ***Technology-facilitated abuse***

Such abuse includes the sending or posting of defamatory or abusive acts or communications delivered through ICT; posting of a survivor’s personal information or material using ICT or impersonation (of the survivor or another individual) using ICT for the purposes of harassing and/or defaming an individual; causing an unauthorised function in a computer or device used or owned by the survivor or impairing authorised functions.

### ***Technology-facilitated stalking***

The use of techniques and technologies to monitor the communication, activities or movements of a survivor. It can be facilitated by access to a survivor’s physical or virtual property, accounts or online profiles (email or social media accounts, for example) and the use of various technologies including but not limited to computer monitoring software (‘SpyWare’ programs<sup>126</sup>), keystroke loggers<sup>127</sup> and location-based tracking software and GPS (Global Positioning Systems).<sup>128</sup>

### ***Traditional stalking***

In the context of this research, this term refers to a perpetrator’s repeated visual or physical harassment and surveillance that does not involve technology; that is, engaging in behaviour that is intended to cause a victim mental or physical harm, including self-harm, or to cause apprehension or fear in regards to another person’s safety. Such behaviour includes but is not limited to following a victim; entering or loitering outside or near a victim’s place of residence, employment or location frequented by that person; interfering with a victim’s property or possessions; keeping a victim under surveillance; issuing threats to a victim; and performing offensive or abusive acts in the presence of or directed to a victim.

### ***Undertaking***

A written commitment to the court, made by a respondent of an FVIO application not to commit family violence or other nominated behaviours.

### ***Violent resistance***

The use of violence by a survivor (or ‘resister’) in response and reaction to a perpetrator’s use of violence in attempts to exert control.

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<sup>126</sup> Used to track online computer usage and attempts to delete search history and emails.

<sup>127</sup> Hardware devices with small hard drives which record every typed key so as to obtain copies of personal identification numbers, passwords and email and URL addresses entered.

<sup>128</sup> That allow for real-time positioning and location. Note, some telephone and social media applications allow for or encourage user location. Facebook, for instance, suggests that users ‘check in’ their locations using Google Maps and the ‘Find My Friends’ program helps iPhone users see where their contacts are at a given moment in time. FIND MY IPHONE / IPAD Location-based technologies such as FourSquare and Google Latitude

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