



**Royal Commission**  
into Family Violence

**Volume III**

# Report and recommendations

March 2016



# **Royal Commission into Family Violence**

## **Volume III**

### Report and recommendations

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# 14 Police: front-line operations and workforce

## Introduction

Police play a very important part in the front-line response to family violence, and are integral to the broader family violence system in Victoria. Police members who respond to family violence incidents are often the first contact that a victim has with the family violence system. An effective police response is essential to victims' ability to remain safe, receive a fair outcome, and recover from the violence.

The Royal Commission acknowledges the significant and ongoing changes that have taken place within Victoria Police in the past 15 years. As an organisation, Victoria Police has shown great leadership and commitment to improving the way it responds to family violence. The Commission also recognises that improvements must be made in order to ensure that family violence is regarded as core business, to improve the investigation of offences, and to ensure that police interact appropriately with victims and with other service systems.

This chapter examines front-line operations and workforce matters; Chapter 15 looks at leadership and systems. The two chapters should be read together.

The first section of this chapter provides an overview of the context and current police practice in relation to family violence. It outlines the evolution of the police response to family violence in the past 15 years, from a situation where family violence was seen as a private matter and often ignored or dismissed, to one in which police are now governed by a Code of Practice for the Investigation of Family Violence that helps keep victims safe and hold perpetrators to account.

The second section of the chapter explores issues and challenges associated with front-line police operations and the police workforce. While the police response has improved, there are still inconsistent approaches that can lead to very different experiences for victims, depending on the circumstances of their interaction with police. These inconsistencies are particularly evident in the way police use the L17 (the family violence risk assessment and risk management report). This section discusses the difficulties and issues around identifying the primary aggressor in cases involving intimate partner violence, and notes that incorrectly identifying the primary aggressor can have serious consequences for a victim. In addition, the Commission examines the way police respond to reports of contraventions (breaches) of intervention orders and the evidence that police might sometimes fail to respond appropriately.

The section goes on to consider challenges related to education and training and supervision and support. It considers the culture and attitudes within Victoria Police and draws on the recent Victorian Equal Opportunity and Human Rights Commission report on this subject. This Royal Commission also acknowledges that police members and employees themselves are not immune from the experience of family violence, as both perpetrators and victims, and examines the organisational response to this.

In the final section of this chapter, after considering current practice and the concerns raised by a number of stakeholders, the Commission puts forward its opinions and proposes a way forward. The recommendations the Commission makes about Victoria Police's front-line operations and workforce development include improving training and processes relevant to L17 risk assessments, reviewing and strengthening police practice identifying the primary aggressor, and establishing a Family Violence Centre of Learning to bolster police education and training.

In relation to the issues identified around police culture, the Commission endorses the recommendations made in the Victorian Equal Opportunity and Human Rights Commission's report supporting the creation of a more diverse, gender equitable workplace. It also recommends that Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence.

The chapter does not deal explicitly with the question of increased demand for police services in connection with family violence incidents. This is examined in detail in Chapter 15, although it is relevant to all the matters canvassed here.

## Context and current practice

Responding to family violence occupies a significant proportion of Victoria Police time and resources throughout the organisation—including general duties police, family violence specialists, and other specialist areas such as criminal investigation units or sexual offences and child abuse investigation teams. Responding to family violence engages all parts of Victoria Police since such violence is involved across a broad spectrum of offending.

In 2011 Victoria Police introduced the Enhanced Family Violence Service Delivery Model, which outlines a three-tier response to family violence. The first tier encompasses the role of general duties police as first responders to family violence incidents. The second tier involves escalating risk and police involvement, for example through applications for family violence intervention orders and the laying of criminal charges. The third tier targets the highest-risk offenders, which can involve management by family violence teams or other specialist units, multi-agency interventions and enhanced victim support.

The police response to family violence is governed by the Code of Practice for the Investigation of Family Violence (2014, version 3), which was first introduced in 2004.<sup>1</sup> The Code of Practice clearly expresses the response and service levels expected of Victoria Police members. It outlines the actions police members are required to take to assess and manage risk via criminal, civil and referral options, as well as expectations for victim support and sensitivity to the experiences of particular population groups.

In early 2015 Victoria Police established Family Violence Command to monitor the organisational response to family violence, maintain organisational accountability and improve police responses to family violence, sexual assault and child abuse. Family Violence Command does not control the allocation of resources to family violence, either in terms of general duties police or specialist family violence teams and roles. Decisions of that nature, as well as operational accountability, reside at the regional level and are determined by the Regional Assistant Commissioner.

In addition to the material presented in this chapter, the 'Context and current practice' section of Chapter 15 examines other relevant matters, including Victoria Police's strategic vision and regional structure.

## The evolving Victoria Police response to family violence

Victoria Police has a crucial role in responding to family violence in our community. Society entrusts police with powers and responsibilities to maximise the safety and support of victims, identify and investigate incidents of family violence and prosecute perpetrators, and assist in the prevention and deterrence of family violence by responding to it appropriately.<sup>2</sup>

Public confidence in the police response to family violence influences victims' willingness to report violence in the first place. Effective police responses can help victims to access support and legal processes designed to protect their safety, as well as hold perpetrators to account and deter them from committing further violence.

Historically, Victoria Police, like its counterparts in other jurisdictions, did not tend to treat family violence as an important part of its work. As Domestic Violence Victoria noted

... police responded to family violence as a private matter, ignoring or minimising it – largely mirroring mainstream community views. It was commonplace for women seeking crisis help to report unhelpful, dismissive and uninformed responses from police.<sup>3</sup>

The situation has improved since 2001, with the appointment of Chief Commissioner Christine Nixon APM and the publication of Victoria Police's Violence against Women Strategy, *A Way Forward*, in the same year. Victoria Police has introduced a number of reforms in the last decade and continues to do so.

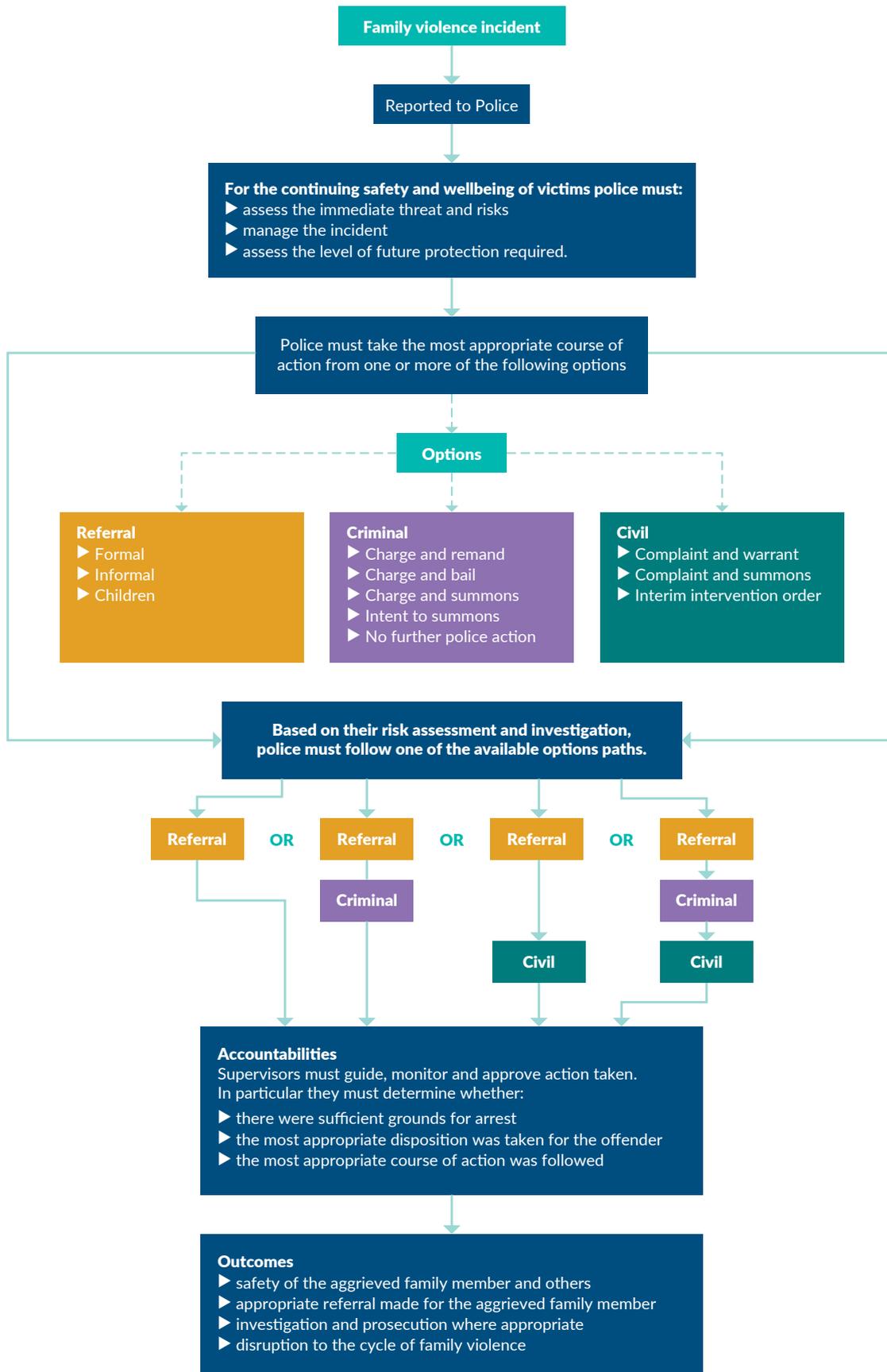
## Police operating procedures

The Code of Practice for the Investigation of Family Violence stipulates a policy of compulsory action by police, who are required to:

... respond to and take action on any family violence incident reported to them ... based on risk assessment and risk management, regardless of whether the AFM [affected family member] makes a verbal complaint or written statement.<sup>4</sup>

Police must respond to family violence as a 'priority unless it is clear that the report relates to a past violence and there is no risk of imminent danger or the person is seeking advice only'.<sup>5</sup> The Code of Practice states that in meeting the policy of compulsory action, police will, among other things, take immediate action to protect and support affected family members (victims) and their children, perform a family violence risk assessment, and use their professional judgment to determine the most appropriate risk management strategy.<sup>6</sup>

Figure 14.1 The Police Options Model: In response to and investigation of family violence



Source: Based on Victoria Police, Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 21.

## Risk assessment

The Code of Practice requires that a family violence risk assessment and management report, known as an L17, be completed for every family violence incident reported to police.<sup>7</sup> This guides police through the complex process of assessing and managing risk in order to protect victims' safety and wellbeing and potentially break the cycle of violence.<sup>8</sup> The L17 is aligned with the risk indicators in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF).

## Civil options

The intervention order scheme was introduced to complement rather than replace existing criminal law remedies.<sup>9</sup> When this civil option was introduced it was seen as an effective way of protecting women and children, in view of the high standard of evidence required for proof of criminal offences and the fact that criminal law looks to past criminal offending rather than future offending.<sup>10</sup>

Police may pursue civil options whenever the safety, welfare or property of a family member appears to be endangered by another family member. These options may be pursued without the agreement of the affected family member.<sup>11</sup>

The two civil law responses available under the *Family Violence Protection Act 2008 (Vic)* are:

- ▷ family violence intervention orders either interim or final<sup>12</sup>—these orders are made by the Magistrates' Court or the Children's Court<sup>13</sup>
- ▷ family violence safety notices, which are temporary orders issued by police that remain in force until the court decides the FVIO application.<sup>14</sup>

Police may issue FVSNs without application to the court<sup>15</sup> and, since November 2014, at any time.<sup>16</sup> Before then, they could be issued outside court hours.

As noted in Chapter 10, children witness or are otherwise affected by a significant number of family violence incidents. Police members must assess the interests of children independently from those of their parents, since their needs might be quite different, and the best interests of the child are of paramount importance.<sup>17</sup> Children can be included on FVIO applications for the affected family member if their needs are similar, but a separate application can be required for a child where 'unique conditions arise and they are not able to be covered in the parent's application'.<sup>18</sup> In addition to providing guidance on the use of police holding powers under the Family Violence Protection Act, the Code of Practice also outlines the ongoing requirements for police informants to support FVIO applications. This includes liaising with the police prosecutor or police lawyer,<sup>19</sup> advising the affected family member of court procedures and discussing any safety concerns, support needs and required FVIO conditions.<sup>20</sup>

## Criminal options

Family violence incidents may give rise to a range of criminal offences, including contravention (often called a breach) of an FVIO, assault, property damage, stalking or threatening behaviour, sexual offences, aggravated burglary, and kidnapping or abduction.<sup>21</sup> The Commission was advised that, since family violence is 'often inextricably intertwined in criminal proceedings', it is common for other criminal charges to appear alongside contraventions of intervention orders.<sup>22</sup>

Contravening an FVIO is a summary offence.<sup>23</sup> In 2012 new indictable contravention offences were added:

- ▷ contravention of an FVIO intending to cause harm or fear for safety
- ▷ contravention of an FVSN intending to cause harm or fear for safety
- ▷ persistent contravention of notices and orders.<sup>24</sup>

The Code of Practice notes that pursuing criminal charges is a primary responsibility of police responding to family violence incidents.<sup>25</sup> It stipulates that police conduct a thorough investigation of all reported family violence incidents, including taking notes of observations and conversations, preserving any physical evidence, taking photographs or fingerprints, and collecting other evidence.<sup>26</sup> In appropriate cases the forensic services department, the local criminal investigation unit, the sexual offence and child abuse investigation team or a crime squad may be called to assist.<sup>27</sup>

The Code of Practice expresses a pro-arrest, pro-charge policy where warranted on the evidence, as noted during the Commission's hearings:

The Code of Practice is a pro arrest document. So where we have the power to arrest someone we will use it so that we are sending a strong and consistent message to the perpetrators that they will be held to account for their actions.<sup>28</sup>

A brief of evidence must be prepared in every case where an offence is deemed to have been committed, and a supervisor decides whether the brief will or will not be authorised for prosecution.<sup>29</sup> Police may proceed with charges if warranted, even if the affected family member is reluctant to give evidence.<sup>30</sup>

Assistant Commissioner Dean McWhirter, Family Violence Command, gave evidence that for 2013–14, in relation to reported crime (not guilty finding or convictions):

- ▷ Offences arising out of family violence incidents accounted for 41.7 per cent of all crimes against the person.
- ▷ Family violence-related assaults accounted for 45.7 per cent of all assaults (with the proportion of family violence-related assaults steadily increasing in the past 10 years).
- ▷ Family violence-related rape offences made up 34 per cent of all rape offences (an increase of 15.6 per cent on the previous year).
- ▷ Family violence-related abduction or kidnapping accounted for 41.7 per cent of all abductions (again an increase on previous years).<sup>31</sup>

In 2013–14 police laid charges for 27,701 family incidents.<sup>32</sup> As principal offences, the most serious offences committed during a family violence incident—crimes against the person—made up the bulk, at 61.4 per cent ( $n=17,020$ ) of charges laid, followed by breaches of orders (22.2 per cent  $n=6143$ ) and property and deception offences (9.1 per cent,  $n=2521$ ).<sup>33</sup>

The Sentencing Advisory Council reported that from 2009–10 to 2014–15 the percentage of police-recorded family violence incidents where charges were laid increased from 22.3 per cent ( $n=7944$ ) in 2009–10 to 38.2 per cent ( $n=27,058$ ) in 2014–15.<sup>34</sup>

## Referral options

Formal referrals occur by police forwarding an extract of the L17 to an external service funded by the Department of Health and Human Services to assist people affected by family violence. The service will then make contact with the affected family member or perpetrator (as required). The L17 is directed to one of 19 area-based catchment points for women and children's family violence services including Safe Steps Family Violence Response Centre (after hours). The Code of Practice stresses that referrals are in addition to, and do not replace, the pursuit of criminal charges or the seeking of civil protection in response to family violence.<sup>35</sup>

Referrals occur in accordance with a family violence referral protocol between DHHS and Victoria Police.<sup>36</sup> Formal referrals are made if, for example, police intend to pursue criminal or civil options, if there is a likely future risk of violence, or to address recidivism.<sup>37</sup>

The Code of Practice states that informal referrals can be appropriate when no evidence is available to pursue a criminal or civil option and there are no immediate concerns for the affected family member's or a child's safety or welfare. Informal referrals involve police in providing affected family members or perpetrators the details of relevant services they might wish to contact.

As described in Chapter 13, both the Code of Practice and the referral protocol with DHHS stipulate multiple referral pathways when children are affected by family violence:

- ▷ When police refer a female victim to a family violence service provider, they must provide details of any children present at the incident. The service will consider the needs of the child and refer on to Child FIRST if required.<sup>38</sup>
- ▷ Police must make a report to Child Protection if their statutory mandatory reporting obligations are triggered under the *Children, Youth and Families Act 2005 (Vic)*.<sup>39</sup>
- ▷ Police may make a report to Child Protection if they have a reasonable belief that a child or young person is otherwise in need of protection within the meaning of the *Children, Youth and Families Act*.<sup>40</sup>
- ▷ Police may make a referral to Child FIRST if they have concerns about the welfare of a child but have not otherwise made a referral to Child Protection or a family violence service.<sup>41</sup>

In evidence, Sergeant Mark Spriggs, Family Violence Advisor, North West Metro Division 5, explained:

Ordinarily, members make notes at the scene of a family violence incident, return to their station, complete the electronic L 17 Forms on LEDR MK 2 and submit the form to a Sergeant for approval. At that point the referrals are automatically sent to family violence services according to the pre-set referral matrix. A Sergeant checks and approves the report and it is then committed to LEAP. The report will continue to exist on both LEDR MK 2 and LEAP.<sup>42</sup>

## Challenges and opportunities

This section considers the challenges and opportunities associated with Victoria Police's front-line operations and workforce. It examines victims' experiences, as well as the experiences of particular population groups, before looking at risk assessment, identifying the primary aggressor and contraventions of intervention orders. Following that, this section discusses workforce development themes such as education, training and supervision, and family violence experienced by, or involving police members.

### Victims' experience of police

A number of concerns related to how victims experience the police response were raised with the Commission. The Commission heard that, despite major reforms in recent years, police service standards in response to family violence remain inconsistent. Domestic Violence Victoria stated:

The role of police is critical to an effective family violence system that provides safety for women and children and holds perpetrators accountable for their behaviour and over the past 15 years Victoria Police have undertaken major structural, procedural and cultural reforms to fulfil this role ... DV Vic believes it is important to acknowledge and commend Victoria Police for the leadership, commitment and profound changes to police responses to family violence in Victoria.<sup>43</sup>

Many submissions noted the positive impact of key reform initiatives on the quality of police responses, among them:

- ▷ the Code of Practice<sup>44</sup>
- ▷ the introduction of family violence safety notices and the willingness of police to pursue intervention orders<sup>45</sup>
- ▷ family violence teams and other Victoria Police specialist family violence positions.<sup>46</sup>

The Commission also heard the personal accounts of victims who have had positive experiences with police:

My first experience was with the police, when the police came. I'm a bit jittery. So my eldest daughter rang the police and they came and that was the best thing that could have happened. It was a violent interaction with him. They sent the family violence police officers. That was fantastic.<sup>47</sup>

[M]y ex at the time, we had recently separated, came to my house and became incredibly violent. I called the police and they arrived and put a protective order in place. The police initiated that order. I was totally unaware of the process. The police were great. The normal police came and then the dedicated family violence unit arrived.<sup>48</sup>

### **Variable responses across police stations and members**

The Commission heard in public consultations and through submissions from victims that the quality of police responses varies from station to station and from police member to police member:

... the hardest part ... is an inconsistency of response—one police officer who is on board and educated and then an officer who has no idea.<sup>49</sup>

Police, so inconsistent, some are great [and] some are awful, they don't keep in touch with women, there are police prosecutors who seem to act on behalf of the perpetrator.<sup>50</sup>

Doncare,<sup>51</sup> Women's Legal Service Victoria<sup>52</sup> and Cobaw Community Health,<sup>53</sup> among others, reported that victims of family violence have negative experiences with individual police members who do not address risk, are dismissive or are reluctant to pursue contraventions of intervention orders. These experiences can deter women from making future reports.

Assistant Commissioner Luke Cornelius, then Assistant Commissioner for the Southern Metropolitan Region, acknowledged in his evidence that responses to family violence vary across stations and members:

Walking up to a station to seek assistance on a family violence matter, look, I would have to say, and the evidence discloses this, it's a bit of a lottery. I would love it for it not to be a lottery. I would love at every point where people contact Victoria Police that they got the level of service that I have articulated and as reflected in the Code of Practice. But it doesn't happen.<sup>54</sup>

### **Variable responses for types of violence**

The Commission also heard that police provided inconsistent responses depending on the type of family violence experienced by the victim even though the Code reflects the range of family violence types under the Family Violence Protection Act.

Family violence workers at three of the Commission's community consultations said that police focus on physical violence and might not recognise psychological and economic abuse, controlling behaviour or other non-physical forms of violence.<sup>55</sup> This view was shared by Deakin University Centre for Rural and Regional Law and the Goulburn Valley and Loddon Campaspe Community Legal Centres.<sup>56</sup> Women's Legal Service Victoria put it this way:

While the Family Violence Code recognises economic abuse, our experience indicates that police often focus on physical and sexual abuse and can overlook economic abuse. Police officers may be better equipped to identify economic abuse if the Family Violence Code was amended to include practical examples of this type of abuse.<sup>57</sup>

## Communication with victims

In addition to dismissive attitudes and limited understanding of non-physical violence, the Commission heard that lack of continuity in police contact with victims was another area of inconsistency.

Family violence workers and victims expressed concerns in community consultations about delays resulting from police informants' shift, leave and other work arrangements and frustration at the apparent lack of collective accountability or communication between police members.<sup>58</sup> As described by Quantum Support Services:

Some women have reported feeling re-traumatised by having to repeat their lived experience with family violence in their interactions with different police personnel. Some have also advised of an inconsistent response across police personnel and a lack of understanding of the complexities of family violence. Some have described their concern with a lack of focus on offender accountability despite repeated interactions with the police, leaving the family far from feeling safer, but further disempowered and victimised by the system itself ...<sup>59</sup>

Consistency concerns were also raised in relation to police informants keeping victims updated on progress. This included not passing on information relevant to safety, such as when a perpetrator has been released on bail.<sup>60</sup> The Commission was also told that, while the police response was good after an incident, communication waned as time passed.<sup>61</sup>

## Response times

Inconsistency in how long it took police to respond to family violence incidents was also raised as an area of concern: 'Need immediacy around response from the police—sometimes you call and then [the] phone rings out'.<sup>62</sup>

The Commission heard that police resourcing and rostering practices were also a factor behind inconsistent response times, particularly in rural and regional areas. Family violence sector workers at one community consultation noted that '... family violence doesn't happen between 9 and 5 Monday to Friday' and suggested that weekend staffing levels at some towns result in delayed responses, which acts as a disincentive to call police.<sup>63</sup>

Assistant Commissioner Cornelius stated that demand pressures also affect response times:

Of course, there are occasions when we do have a number of critical incidents at a given point in time and its going to be difficult for us to have the resources available to respond to every one of those incidents. Of course, if we are not able to deploy local resources to attend to those priority 1 matters, we will look to draw on resources and response capacity from elsewhere across a local area command or elsewhere across a division or elsewhere across a region.

The key point for us is we seek to line up the available resource and get it there as quickly as we can, but there are a whole range of factors which impact on how long that might take.<sup>64</sup>

Evidence from Victoria Police suggested that the way people contact police affects response times:

... if you are the victim of a breach of an intervention order, call 000. All calls to 000 are recorded ... There is an accountable record made of that contact. 000 calls are allocated for service via CAD, and, again, that's an accountable process.<sup>65</sup>

## The experience of particular population groups

Another theme that emerged from the evidence before the Commission was that despite specific guidance in the Code of Practice regarding communities that face specific barriers to seeking help, certain population groups in the Victorian community continue to face challenges in accessing quality police responses to family violence. The barriers these groups faced are discussed in detail in the introduction to Volume V of this report; what follows here is a brief outline.

### Aboriginal and Torres Strait Islander peoples

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) told the Commission that the legacy of Australia's colonial history persists, with Aboriginal victims of family violence facing significant barriers to reporting such violence and seeking and obtaining support. Among the barriers are poor police responses, discriminatory practices, and a lack of cultural competency.<sup>66</sup>

The Commission heard about constructive initiatives between police and the Aboriginal community statewide and at the local level. This includes the work of the Indigenous Family Violence Regional Action Groups (IFVRAGs) to engender confidence in the Aboriginal community about reporting family violence to police, improved police responses where Koori Family Violence Police Protocols (the Koori Protocols) have been implemented, enhanced service responses from family violence teams, and numerous local-level collaborative initiatives.

However, evidence provided to the Commission from Aboriginal and Torres Strait Islander peoples, suggested continuing challenges: 'Police are no good. You have to be bashed before they come out. They take so long to come out, especially once they know [you are] Koori'.<sup>67</sup>

Aboriginal stakeholders told the Commission police do not always comply with the Code of Practice when responding to Aboriginal people.<sup>68</sup> The FVPLS Victoria submission stated that lawyers reported inadequate responses from police, including comments from police members to victims that minimised the violence and discouraged them from seeking intervention orders.<sup>69</sup>

### People from culturally and linguistically diverse communities

The Ethnic Communities' Council of Victoria told the Commission that it is difficult for women with limited English language skills to gain access to police or support services.<sup>70</sup> A further barrier is fear of being stigmatised and ostracised in their community.<sup>71</sup> Those who have experienced conflict-related trauma and poor police practice before moving to Victoria or who have had negative experiences in Victoria can also distrust police.<sup>72</sup>

Moonee Valley City Council noted the importance of building partnerships with community leaders: 'Working with CALD community leaders as important supports and advocates can instil change at community level and build trust to work with Police and local authorities over time'.<sup>73</sup>

InTouch Multicultural Centre Against Family Violence told the Commission that police, while well intentioned, can be insensitive to the needs of women and children from culturally and linguistically diverse backgrounds and can misunderstand cultural responses to family violence.<sup>74</sup> Both InTouch and the Ethnic Communities' Council of Victoria highlighted the importance of providing culturally sensitive training in family violence to police, and engaging professional interpreters as early as possible.<sup>75</sup>

In 2014, following the release of its Equality is not the Same report and the associated three-year action plan, Victoria Police established a number of portfolio reference groups representing a number of communities—Aboriginal and Torres Strait Islander, disability, LGBTI, mental health, multicultural, older people and young people. Each group is chaired by an assistant commissioner and is made up of representatives of key peak bodies and advocacy groups representing their community.<sup>76</sup>

During hearings InTouch representatives highlighted that Victoria Police is doing positive work:

... there is a lot of willingness and effort from the police to engage with CALD communities. I have to say that there are issues, but we are working on them and the partnership has been really good.<sup>77</sup>

## Lesbian, gay, bisexual, transgender and intersex people

The Commission heard that lesbian, gay, bisexual, transgender and intersex people also face barriers in reporting family violence to Victoria Police. The Victorian Gay & Lesbian Rights Lobby (referencing the NSW Inner City Legal Centre) submitted that:

Stigma still surrounds domestic violence in LGBTI relationships, and LGBTI communities are less likely to report, seek support, or identify experiences of domestic violence and abuse, at least in part because of a fear of 'outing', gender stereotypes, and perceived and actual discrimination and harassment.<sup>78</sup>

These views were reinforced by Gay and Lesbian Health Victoria, which noted that Victoria Police has made significant progress in developing relationships with the LGBTI community, including through the network of Gay and Lesbian Liaison Officers.<sup>79</sup> However, the Commission was advised that although the Liaison Officer role is important for people, the number of officers and their availability are limited.<sup>80</sup> Gay and Lesbian Health Victoria told the Commission that family violence training at all levels should incorporate material relevant to the LGBTI community.<sup>81</sup>

## People with disabilities

The Commission heard that people with disabilities face a number of difficulties associated with the police response to family violence.<sup>82</sup> Victoria Police acknowledged that reporting of family violence by people with a disability does not reflect the prevalence of violence against people with disabilities.<sup>83</sup> The Victorian Equal Opportunity and Human Rights Commission noted in its *Beyond Doubt* report that it had received reports of police members failing to take family violence reports from victims with disabilities.<sup>84</sup>

The Code of Practice for Investigation of Family Violence states that police should engage the services of a support person or independent third person as soon as possible in an investigation involving people with disabilities.<sup>85</sup> The Commission received evidence from the Victorian Public Advocate, however, that police do not always do this, and that there are disparities in the use of the independent third person program in Victoria.<sup>86</sup>

These concerns also affect people who experience mental illness. The Women's Mental Health Network Victoria told the Commission its clients have reported that making complaints to police about family violence is a 'horrendous experience':

When I said I had a mental illness I was treated as though I was not credible ...  
I am not believed.

I called police to report violence, they said I had [a] mental illness so they would have  
to call the clinic to ask for proof I was credible.<sup>87</sup>

Moreland Community Legal Service highlighted the lack of specialist resources for front-line police to draw on.<sup>88</sup> The Commission also heard about new initiatives to improve Victoria Police's capacity to identify and deal with mental health problems, particularly in the context of family violence, related to either victims or perpetrators. NorthWestern Mental Health submitted:

Mental Health services have received additional funding to support one shift per day of a senior clinician who goes with police as a secondary response to situations where it is believed mental illness or disorder is a contributing factor. A significant number of calls to [police] involve family violence. The clinician is able to undertake an assessment with police present to determine whether the person should be referred for further treatment, or admitted to an inpatient unit, or indeed whether a criminal justice outcome would be more appropriate. An indirect benefit of this service is an improved understanding of the roles and modes of working by police and mental health practitioners and greatly improved sharing of information.<sup>89</sup>

In its submission Victoria Police highlighted two new programs—Police and Clinical Emergency Response Units and Taskforce Alexis. PACER Units involve a police member and a mental health clinician operating as a secondary response unit to provide assistance to divisional vans. Taskforce Alexis provides a local coordinated response to family violence, mental health, and youth and crime prevention. The 24-person taskforce comprises a Family Violence Team, a Mental Health Team and a Proactive Team co-located at the Moorabbin Police Complex. The task force also involves a family violence key worker (a qualified social worker funded by the Salvation Army), a mental health clinician (part of the PACER model with Monash Health) and a police intelligence practitioner. The task force meets monthly with key external partners to coordinate responses and discuss responses to vulnerable families.<sup>90</sup>

### **People in rural, regional and remote communities**

Another issue raised with the Commission concerned the impact of small-town culture on policing services in rural, regional and remote communities, particularly where perpetrators have existing relationships with police members. Primary Care Connect told the Commission of multiple cases where victims living in smaller communities were reluctant to report family violence because of connections between individual police members and perpetrators through sporting clubs, pubs and other social contexts.<sup>91</sup> One victim explained:

... [I] experienced prejudiced attitudes and threatening behaviour, mostly by officers who knew my husband and did not wish to assist me, or worse still, openly made threatening statements towards me to discourage me from following through on applications. I believe this situation was exacerbated as I was living in a rural area.<sup>92</sup>

Other submissions stated that local police might be reluctant to take action because they do not believe the perpetrator could have committed family violence or because they wanted to ‘keep the peace’.<sup>93</sup> Geographical isolation was also raised as a factor affecting victims’ perceptions of how responsive police could be:

I get nervous in my town as there is only one road in/out and at times I feel trapped. I try to tell myself that it makes it safer for me. I feel isolated and have no faith that the police will respond promptly if I need them.<sup>94</sup>

Numerous submissions also expressed concern about there being insufficient police resources (specialist and general duties positions) in rural, regional and remote areas:<sup>95</sup>

Specialist police in regional and rural areas typically cover large catchment zones and have extensive caseloads. Consequently ... [w]hile women and workers generally recognised the value of Family Violence Liaison Units, some participants reported extensive waits to speak to the unit’ (Jordan and Phillips 2013) ... Difficulties experienced by survivors in accessing specialist police, not only Family Violence Liaison Officers but also Aboriginal Liaison Officers and Multicultural Liaison Officers must be rectified.<sup>96</sup>

### **Male victims**

Through some submissions and in community consultations the Commission was told that police do not take male victims of family violence seriously and that police lack the resources to investigate false allegations of family violence against men.<sup>97</sup> Male victims are discussed in detail in Chapter 32.

Although it is important to recognise that men can be victims of family violence, the Commission was also told that some men believe women use the family violence intervention order system unfairly against them, when the women are in fact doing so to seek safety.<sup>98</sup>

## Risk assessment and the L17

Victoria Police's front-line response to family violence depends on accurate risk assessment and appropriate risk management strategies, as outlined in the Code of Practice.

Risk assessment, including the L17, is discussed in more detail in Chapter 6. Below we summarise some of the community feedback on police risk assessment practice.

Domestic Violence Victoria explained the broader significance of Victoria Police risk assessment as follows:

The role of police in undertaking family violence risk assessment is a critical linchpin in the integrated family violence system. The information gathered by police when they attend a family violence incident, is essential to building a comprehensive understanding of the level of risk faced by a particular family. With the specialist family violence services, this information informs subsequent decision-making and the support received from there on.<sup>99</sup>

The Commission heard from a range of sources that police proficiency in conducting risk assessments affects the quality and consistency of responses to family violence.

A number of people expressed concern about the Victoria Police risk assessment process. Aunty Janine Wilson, Chairperson of the Northern Loddon Mallee Indigenous Family Violence Regional Action Group, told the Commission:

Once it gets past the sergeant, can't fault the system. It's the response of the officer or the two officers that attend the 000 phone call that seem[s] to [not] get it.

[T]hat officer that does his risk assessment that's not doing his job. You have some good police who do it, you have some stalwarts that just won't do it, and you have some young ones being taught some bad habits. So I'm not picking on one officer, I'm not picking on one station, I'm picking on a system that can't get it right from the hierarchy down.<sup>100</sup>

Domestic Violence Victoria stated that family violence workers have a range of concerns with the L17 risk assessment process,<sup>101</sup> among them the following:

- ▷ Police can treat risk assessment as a form-filling process.
- ▷ Police can view family violence incidents as one-off events, rather than as part of a pattern of coercive control and abuse.
- ▷ Evidence gathering should not detract from risk assessment. Both are vital roles in the police response to family violence incidents, but sometimes evidence gathering received priority at the expense of risk assessment.
- ▷ The risk assessment process does not allow for new information to be shared about an alleged offender or victim.
- ▷ Standard police training covers only basic risk assessment.
- ▷ Training in use of the CRAF is not widespread among police, and the framework is not tailored for a police context.
- ▷ Police might not have a good understanding of how to assess risk for children.<sup>102</sup>

Victoria Police noted that family violence training was provided from 2008–09 to support the implementation of the Family Violence Protection Act. This included risk assessment information congruent with the CRAF and was provided to 6013 police members between 2008–09 and 2010–11.<sup>103</sup> Training on use of the L17 is included in foundational training for all police recruits.<sup>104</sup>

Domestic Violence Victoria raised other questions relating to the quality of L17s –for example, police members not collecting enough information, leaving consent checkboxes blank, failing to verify contact details (for instance, when alleged offenders provide false phone numbers) and including only limited excerpts of information for family violence agencies.<sup>105</sup>

During the community consultations family violence workers also raised concerns about the lack of feedback loops between police and family violence services in relation to the outcomes of L17 referrals.<sup>106</sup> Feedback on the outcome of referrals is encouraged under the referral protocol, but workers said this depended on individual relationships on the ground.<sup>107</sup>

Police members are reportedly frustrated about the absence of feedback they receive on the outcome of L17 referrals.<sup>108</sup> The Commission heard that once an L17 has been sent to a referral agency, confidentiality and privacy laws prevent police from providing any additional pertinent information about the perpetrator or victim to the relevant service.<sup>109</sup>

The former State Coroner, Judge Ian Gray, also identified a number of shortcomings associated with the current L17 system in his report on the inquest into the death of Luke Batty:

- It does not explicitly address or assess risk factors for children exposed to or experiencing family violence;
- It provides little guidance on how to weight and combine risk factors (and is better characterised as a risk identification tool rather than a risk assessment tool);
- It does not provide any guidance to the officer completing it to identify the nature of the likely future harm about which a person/child is being assessed. Therefore, an assessment of likelihood of risk of harm is unable to be linked to a particular kind of harm or any narrative analysis of the assessment of those risks;
- Police officers do not to [sic] receive adequate training on how to conduct a family violence risk assessment.<sup>110</sup>

Judge Gray also found that the L17 process is not designed to accommodate changing risk factors and views incidents in isolation.<sup>111</sup> More broadly, he found there is a lack of information sharing between agencies that respond to family violence.<sup>112</sup>

During the community consultations, family violence workers expressed similar concern about the lack of information sharing in relation to risk assessment, which, they argued, detracts from integrated service delivery.<sup>113</sup> Domestic Violence Victoria noted that, because police L17s generate separate referrals for women, men and children, family violence services perform risk assessments 'without access to full information about the critical relational aspects of a woman's experience of violence.'<sup>114</sup> Broader aspects of information sharing, and multi-agency and integrated service delivery models or initiatives, are discussed in Chapters 7 and 13.

## **Risks to children**

Another concern related to the L17 referral process, as raised with the Commission, is to do with police members being unsure about whether to make a referral to Child Protection, Child FIRST or a specialist family violence service when children are present. For example, family violence workers in Shepparton described their uncertainty about whether matters involving children should be referred to Child Protection or Child FIRST.<sup>115</sup> This lack of clarity can delay contact with the family, which the Children's Protection Society says can reduce the likelihood of engagement with services.<sup>116</sup> Anglicare submitted that the system is not responsive enough to make the best use of crisis situations to secure engagement.<sup>117</sup> Chapter 13 discusses this issue further.

Connections UnitingCare noted that some referrals contain only limited information, which makes it difficult to act on them; the Children's Protection Society stated that police rostering is such that it can be hard to get in touch with the relevant police member to fill information gaps, contributing to delays in responding to families.<sup>118</sup>

Victoria Police acknowledged the challenges its members face when assessing risk to children and making appropriate referrals:

At present, the response options available to police are limited to mandatory reports to Child Protection where there are protective concerns, or referral to Child FIRST where there are more general concerns. This two-doorway system means Child Protection may receive a large volume of referrals that require their assessment before being deemed below their service threshold and that divert their resources from responding to cases that do merit their intervention ... At present, police are expected to make decisions about this pathway in the field, sometimes with limited information.<sup>119</sup>

Assistant Commissioner McWhirter elaborated on this during the hearings:

From a Victoria Police perspective, we are not trained experts. We are doing an initial assessment to actually direct somebody else who has those specialist skills to actually make that [decision] about what service should be provided to that child in that family situation.

...

We can't be all things to all people. I think we clearly have the capacity to identify that a child is at risk. But in terms of the actual support that needs to be provided as a follow-up, that is not our role or our obligation ...

...

[F]rom our perspective it should be a single referral to a location with specialists who understand about child protection, understand about the nuances and implications around risk for children and that they should be making those decisions about what services are provided, whether it's Child FIRST or whether it's Child Protection.<sup>120</sup>

### **The police perspective on risk assessment**

In addition to the views of external stakeholders, the Commission considered Victoria Police's 2013 review of the Code of Practice. This review identified a number of shortcomings associated with the L17 process, including:

- ▷ Police members who have not had an opportunity to rotate through a Family Violence Team are frustrated at the number of questions on the L17.<sup>121</sup>
- ▷ These members view the L17 as a data-collection tool for other agencies, a view stemming from a lack of understanding of the purpose and meaning of the risk assessment process.<sup>122</sup>
- ▷ There is a tension between the practice of completing L17s back at the station (and relying on memory) and the need to base decisions in the field on risk assessments.<sup>123</sup>
- ▷ Risk assessment is a secondary guide to other factors.<sup>124</sup>
- ▷ There is evidence that police do not identify some well-known danger signs—such as pregnancy or a new child, harm to pets, the presence of disability, the respondent being excessively jealous, or having made threats or demonstrated coercion, and where the violence has included sexual assault or strangulation.<sup>125</sup>
- ▷ Supervisors noted that some members tended to view the incident but not the history behind it and the presence of non-criminal risks, and identified the need for better training to resolve quality shortcomings—such as incomplete narratives, consideration of prior histories of violence and assessment of future risk.<sup>126</sup>

The Police Association Victoria's submission emphasised that the process of completing L17s and the associated paperwork remains time consuming. This is despite the improved recording practices brought about by the LEDR Mk II program, which allows police to enter L17s directly into the statewide LEAP (Law Enforcement Assistance Program) database. The association's submission contains quotes from police members that illustrate the ongoing administrative burden associated with family violence paperwork:

A major problem with Victoria Police is that we're doing half the things on paper, half the things digital. The fact that you've got to do your L17, and then wait two days to have a sergeant put it on LEAP and then go, 'Oh, don't forget to file these criminal investigations'. But you couldn't put those criminal investigation 25 forms on because you didn't have a LEAP incident number.

There is a button that says 'add sub-incident'. It doesn't work. You can't use that. But there should be something that you can click and go, 'I want to add to this that he also did this'. And then you save on having to re-enter the victim's information and the address another 20 times for your threats to kill and your unlawful assault and your aggravated assault and all your breaches. Sometimes it's like six pieces of paperwork with the same information on it.<sup>127</sup>

### **Trial of actuarial risk assessment and triage tool**

Assistant Commissioner McWhirter also outlined for the Commission changes under way to resolve some of the difficulties with the L17 process.

Victoria Police has engaged the Centre for Behavioural Science, at Swinburne University of Technology and Forensicare to develop triage tools, including a revised L17 form, for use by general duties police members at family violence incidents to determine the level of specialist police response required.<sup>128</sup> This will be trialled in 2016 in specific locations in Western Melbourne.<sup>129</sup> Assistant Commissioner McWhirter described the rationale for the trial:

So it's about ... understanding that there are differences of where we need to invest our resourcing. What that will mean is that it should actually give some clarity for members in terms of risk assessment. Clearly we need a whole lot of education around that if we go down that path and we would need to pilot, which is our intention, and it is part of my responsibility in terms of Family Violence Command. What it needs to do is to look at our approach to the L17.<sup>130</sup>

In summary, the trial will use an actuarial screening tool based on a large sample of Victoria Police data to predict the likelihood of a perpetrator or victim being involved in a further police family violence incident in the next 12 months.

Police attending incidents will use this tool to determine whether a full risk assessment (using a revised L17 form) should then be conducted.<sup>131</sup> Incidents that do not reach the threshold score on the triage tool will not have a full L17 completed, and will not have a formal referral to a victim or perpetrator service.<sup>132</sup> Victoria Police advised, however, that these incidents will continue to receive the standard criminal, civil or referral response consistent with the Code of Practice and that the categorisation under the tool will not influence the criminal prosecution response.<sup>133</sup>

If an incident does meet the threshold score, the completed L17 will be sent to the family violence team for further assessment (using another tool also being developed), to determine the level of intervention by that team,—either 'standard preventative follow-up' or 'a more intensive level of assessment and management'.<sup>134</sup> As is the case now, the L17 will also be sent to the relevant specialist family violence service or men's intake for follow-up.

There is an option for police members to over-ride the points assessment in cases where the incident has reached the threshold score but using their professional judgment they consider the matter requires escalation to the Family Violence Team.<sup>135</sup>

This is a three-year project, the final report and evaluation being due for completion by December 2018. An initial evaluation of the triage instrument will be completed by December 2016.<sup>136</sup> The trial is discussed in more detail in Chapter 6.

## Identifying the primary aggressor

### The primary aggressor

The Code of Practice for the Investigation of Family Violence defines 'primary aggressor' in the following terms:

**Primary Aggressor** – the party to the family violence incident who, by his or her actions in the incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other.<sup>137</sup>

The Code of Practice stipulates that identification of the primary aggressor is compulsory for police members. It also states that only one primary aggressor should be identified, and that 'cross applications for intervention orders should not be made'.<sup>138</sup>

The Code of Practice provides the following guidance for police in identifying the primary aggressor:

Key indicators to identify the primary aggressor include:

- Respective injuries
- Likelihood or capacity of each party to inflict future injury
- Whether either party has defensive injuries
- Which party is more fearful
- Patterns of coercion, intimidation and/or violence by either party

If it is unclear who the primary aggressor is, the AFM [affected family member] should be nominated on the basis of which party appears to be most fearful and in most need of protection. Record reasoning as appropriate in the Case Progress Narrative.<sup>139</sup>

Elsewhere, the Code of Practice urges police members to take the time to accurately identify the primary aggressor:

Police must remain patient during their response and investigation and not make assumptions when assessing evidence and determining who the likely primary aggressor is. It is also important for police to be cautious of undue influence, power imbalances and/or possible manipulation by the alleged perpetrator.<sup>140</sup>

The Commission heard from a number of sources that police members can sometimes incorrectly identify the 'primary aggressor' in family violence cases. It was said this can have adverse consequences for the administration of justice and it can give rise to lost opportunities for family violence services to engage with victims. The Commission also understands that if it is later established a woman was incorrectly identified as a primary aggressor there is no mechanism, or a perception that there is no mechanism, to update LEAP and ensure she can obtain appropriate support.

Over the past five years in Victoria there has been a slight increase in the proportion of women arrested in family violence incidents and as respondents in FVIO applications. Table 14.1 provides a gender breakdown of charges recorded on LEAP for the main categories of family violence offences: crimes against the person, property and deception offences, and justice procedure offences.

Table 14.1 Gender of perpetrator for charges laid for: key family violence offence types, 2009–10 to 2013–14<sup>141</sup>

Gender	2009–10	2010–11	2011–12	2012–13	2013–14
Male perpetrators %	87.06	85.59	85.34	84.61	84.51
Female perpetrators %	12.94	14.41	14.66	15.39	15.49
Number of charges laid <sup>142</sup>	7150	9461	14,339	21,848	25,642

a. A small number of offences are excluded when the gender of the 'other party' is missing—13 in 2009–10, 21 in 2010–11, 47 in 2011–12, 70 in 2012–13 and 82 in 2013–14. Note: Offence types are crimes against the person, property and deception offences, and justice procedure offences. Source: Crime Statistics Agency.<sup>143</sup>

A number of people expressed concern that police members sometimes inaccurately identify victims as primary aggressors. One individual told the Commission:

Many Police still cannot tell who the primary aggressor is when confronted with a situation at a family home. Police are still taking [out] family violence safety notices on victims and perpetrators at the same time.<sup>144</sup>

Women's Health West Inc. submitted:

Our experience tells us that when police refer women to us as respondents, they are most often the primary victims of family violence, having used violence in self-defence or in response to an act of violence initially directed at them. They are not the primary aggressors, as commonly reported by police in their L17s.<sup>145</sup>

Ms Jacky Tucker, Family Violence Services Manager at Women's Health West Inc, offered some insight into the scale of this problem during the Commission's hearings:

In June we received 57 referrals from police identifying the female as the respondent. Of those, after assessment and conversations with all the women, we identified six perpetrators of family violence out of the 57.<sup>146</sup>

Ms Tucker went on to clarify the assumptions sometimes made about women in family violence situations:

I think that there's probably a little bit of myth around the presentation of women who are victims of family violence, that somehow they are submissive in behaviour ... Because a woman is angry, there's some reason that anger is then transferred to identifying her as the perpetrator, where in fact she is not the perpetrator.<sup>147</sup>

Safe Steps provided insight into the dynamics behind difficulties identifying the primary aggressor:

Perpetrators of family violence regularly use the privacy of the home and the incident-based responses of police to conceal the extent of violence. At incidents attended by police perpetrators can appear calm and reasonable, and suggest to police that the woman is unreasonable due to her apparent agitation. Police must be trained to identify the primary aggressor in family violence incidents.<sup>148</sup>

The Commission also heard that primary aggressor difficulties are particularly relevant for marginalised groups in the community—for example, people from culturally and linguistically diverse backgrounds, who may have reactions to violence that are culturally different from those with whom police are familiar and are therefore misinterpreted by police.<sup>149</sup>

Women with Disabilities Victoria stated that women with disabilities reported being misidentified as primary aggressors; Flat Out Inc. told the Commission women who have a criminal record can be similarly misidentified.<sup>150</sup>

The Aboriginal Family Violence Prevention and Legal Service Victoria stated that it has assisted a number of clients in situations where the police have not properly identified the primary aggressor, which can lead to further victimisation of the affected family member. It provided a case study to illustrate the point.<sup>151</sup>

### Case study: Sarah

Sarah had experienced a history of family violence by her partner, Peter—most of which she had been too frightened to report as she lived in a small town where Peter had significant influence and friends in the police force.

In one instance, Sarah was physically assaulted by Peter and fled the family home with her four children. Peter drove after her, speeding, shouting and driving dangerously. Sarah drove to the police station with Peter in pursuit.

When Sarah arrived at the police station, a police officer asked the children what had happened and they said, 'Daddy hurt Mummy'. Peter subsequently arrived at the police station and another police officer who knew and was friends with Peter took Peter aside.

The police asked Sarah whether she had anywhere to stay that night. Sarah said that she would have to go to the next major town which was more than two hours drive away. The police officer told Sarah that was too far and that she should 'let the kids stay in their own beds tonight.' Sarah was told to come inside the station and let her children go home with Peter. The police told her they would help her find somewhere safe to stay. Sarah was incredibly distraught and upset and did not feel like she had the emotional resources to disagree with the police officers. She waited at the station for five hours until they found her accommodation in the same town she had originally intended to go to.

As Sarah got up to leave the police station, she was served with an intervention order application taken out by the police against Sarah for the protection of Peter and the children. The police did not make a similar application against Peter for her protection, nor did they advise her to obtain legal advice about the matter. Sarah was shocked and confused.

Sarah ultimately sought advice from FVPLS Victoria who assisted her to lodge a police complaint, obtain her own IVO, regain her children and dispute the police application against her.

The Commission was told that the L17 forms generated by Victoria Police can wrongly identify female victims as the perpetrators of family violence against their male partners.<sup>152</sup> Conversely, Victoria Police can incorrectly refer the male partner to the Victims Support Agency for assistance when he is in fact the primary aggressor. Indeed, the Victims Support Agency's Victims of Crime Helpline Practice Manual notes that some male primary aggressors can be incorrectly referred by the police to the agency.<sup>153</sup>

The Victims of Crime Helpline Practice Manual describes how to establish whether a man is using violence or requires protection from family violence. It lists indicators that might help in determining whether the man is a victim—for example, if the offender is also male.<sup>154</sup>

Similarly, the Helpline's Male Family Violence Practice Manual annexes primary aggressor guidelines prepared by No To Violence. These guidelines encourage the use of techniques that focus on questioning, rather than confrontation.<sup>155</sup> They also provide a comprehensive list of open-ended questions that might be asked.<sup>156</sup> Additionally, the manual sets out a corrective process to be used in the event that police have incorrectly identified a man as the affected family member.<sup>157</sup>

Further submissions outlined other negative consequences of failing to identify the primary aggressor. For example, the Footscray Community Legal Service stated that police sometimes initiate cross-applications, contrary to the Code of Practice and having failed to identify the primary aggressor. This, it was said, can impede the administration of justice:

[I]t would appear that a common approach by Victoria Police officers is to initiate cross-applications where there is uncertainty as to who is the primary victim in a domestic violence incident, resulting in an increased number of unmeritorious applications, and a drain on court and legal services.<sup>158</sup>

Women's Legal Service Victoria described the effects of cross-applications resulting from police incorrectly identifying the primary aggressor. These include not holding the primary aggressor to account and not keeping the victim safe.<sup>159</sup> It also argued that cross-applications consume court time and add to delays:

Duty lawyers (of both parties) and police representatives spend a significant amount of time on the day of the mention hearing establishing what has happened in the case. Regularly the police informant is not available and the police representative is not able to withdraw one of the applications. The matter is usually adjourned.<sup>160</sup>

### **Lessons from other jurisdictions**

Researchers in other jurisdictions have examined the primary aggressor question in some detail. In their report entitled *Family Violence—A National Legal Response* the Australian Law Reform Commission and the New South Wales Law Reform Commission noted that primary aggressor policies arose in the United States after mandatory or pro-arrest statutes led to an increase in the number of dual arrests in family violence incidents.<sup>161</sup> Academic commentators explained:

These mandatory and presumptive statutes encouraged police to adopt a more legalistic orientation and avoid the use of discretion. As a result, when police encountered two violent parties, they increasingly chose to arrest both parties and assumed that the prosecutor would determine who should be charged and/or the court would determine who the guilty party was.<sup>162</sup>

Research from a number of North American jurisdictions shows an increase in the number of women arrested for intimate partner violence since the implementation of mandatory or pro-arrest policies.<sup>163</sup> A number of authors criticise these pro-arrest policies, suggesting that innocent women are arrested after defending themselves against their abuser.<sup>164</sup>

As a consequence, by 1 July 2012, 34 states in the United States had enacted primary aggressor laws.<sup>165</sup> The laws vary in their detail, but aim to ensure that police receive guidance in determining who is the 'real' offender; this includes looking at the history of abuse.<sup>166</sup>

In New South Wales in 2012, the Standing Committee on Social Issues noted there has been an increase in police proceedings against women for domestic violence offences—however, the report stated that this is one of the most controversial aspects of its inquiry.<sup>167</sup> The Standing Committee report found that between 2001 and 2010, there was an average increase of 10 per cent a year in the number of females subject to police proceedings for domestic assault, compared with a two per cent increase for males.<sup>168</sup> These findings are controversial, and the consensus is that there is insufficient evidence to explain the true cause of the trend. Many participants in the New South Wales inquiry recorded strong views and policy prescriptions on the subject. Very many saw it as an unintended consequence of pro-arrest policies and the inability of police to correctly identify the primary aggressor;<sup>169</sup> others saw it as 'reflect[ing] the reality of female domestic violence offenders which has historically gone unrecognised and unaddressed'.<sup>170</sup>

The debate is also reflected in the literature, which suggests that women might use force as a result of past victimisation and their relative powerlessness.<sup>171</sup>

### **Improving the police approach**

A number of submissions to this Royal Commission called for improvements to police training and for support and guidance to better equip members to accurately identify primary aggressors.<sup>172</sup>

One member of the public advised the Commission that the difficulties surrounding police identification of the primary aggressor could be resolved through greater use of specialist, highly trained family violence units.<sup>173</sup> This aligns with the Standing Committee's report, which noted that participants identified a greater role for skilled police in conducting investigations or supervising staff and providing guidance on primary aggressor identification.<sup>174</sup>

The New South Wales report also recommended that further research be done on police investigations and the primary aggressor, with the findings to guide actions in relation to legislation, policy, practice and training.<sup>175</sup> The Australian and New South Wales Law Reform Commissions report also endorsed further consideration being given to counsellors attending family violence incidents with police, a suggestion that arose in a 2008 review of Western Australian family violence laws (and was based on the Australian Capital Territory model).<sup>176</sup>

As one Canadian study found, adequate police training in relation to primary aggressor policies can be effective in reducing the rates of dual arrest at family violence incidents.<sup>177</sup>

## **The police response to contraventions of intervention orders**

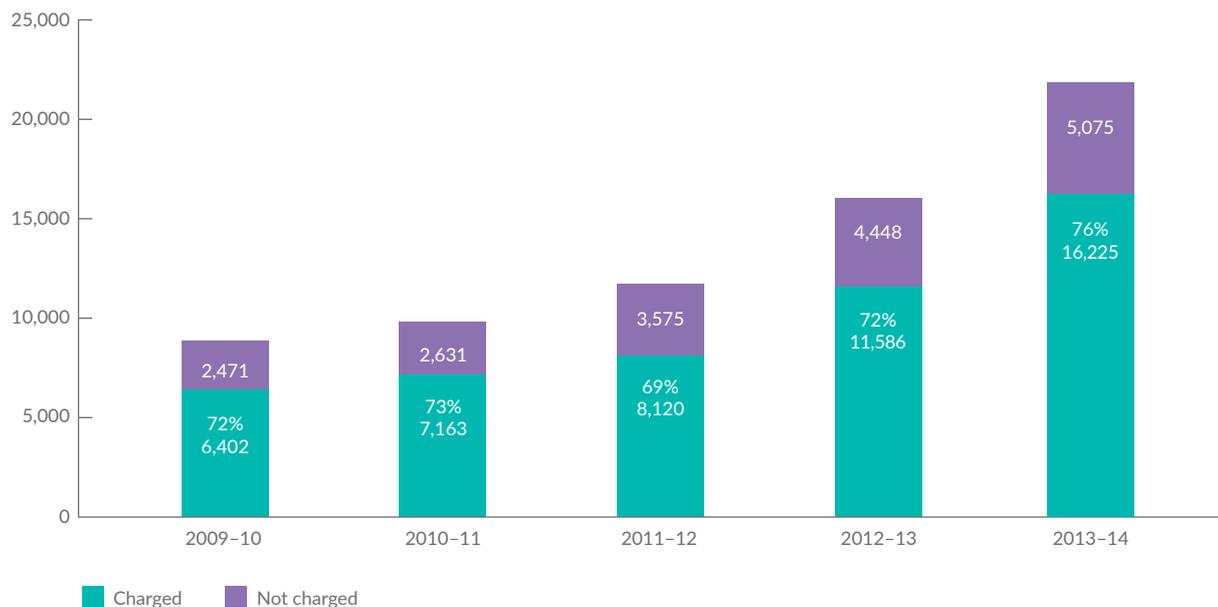
The police response to contraventions (breaches) of intervention orders was raised by many people at the Commission's community consultations and in submissions.<sup>178</sup>

It is not possible to discern what percentage of family violence intervention orders are breached because there is no link on police or court data systems between granted intervention orders and FVIO contraventions. The Commission was told that Victoria Police is trying to redress this limitation.<sup>179</sup> Chapter 39 examines the technology limitations between various data systems.

Figure 14.2 shows that the number of reported family violence-related breach offences increased by 140 per cent between July 2009 and June 2014. In 2009–10, 8873 breach offences were reported to and recorded by police, compared with 21,300 in 2013–14.<sup>180</sup> In the nine months from July 2014 to March 2015 a total of 20,195 breach offences were recorded, indicating that 2014–15 will show an increase on the preceding year.<sup>181</sup>

Of the 21,300 recorded breach offences in 2013–14, charges were laid for 16,225 (76.2 per cent). In 2009–10 the percentage was 72.2 per cent and, as Figure 14.2 shows, the proportion has changed little in the five years since 2009–10.<sup>182</sup> The data should, however, be interpreted with caution. As the Sentencing Advisory Council noted, 'multiple contravention charges may relate to a single FVIO, and the rate of contraventions may be inflated due to a small number of repeat offenders'.<sup>183</sup>

Figure 14.2 Recorded family violence breach offences, charged and not charged: Victoria Police, 2009–10 to 2013–14



Source: Victoria Police (prepared by the Crime Statistics Agency), 'Table 1: Number of Recorded Offences for Breach of Family Violence Intervention Order by Offence Code, Police Region and Investigation Status, July 2009–March 2015', produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).

The data provided to the Commission includes a breakdown of the number of charges (and no charges) for the new offences of contravention of a family violence intervention order or family violence safety notice, with intention to cause harm or fear for safety and persistent contravention of order. During 2013–14 there were 3428 recorded contraventions with intent to cause harm or fear for safety (both FVSN and FVIO). Of these, police laid charges for 2031 offences (59 per cent). The charge rate for these offences increased to 67 per cent ( $n=2092$ ) for the period July 2014 to March 2015.<sup>184</sup>

Police laid charges in 1084 of 1166 recorded persistent contraventions in 2013–14 (93 per cent). For July 2014 to March 2015, the charge rate for this offence was 86 per cent ( $n=1193$ ). In view of the short time that these offences have been in existence, it is not possible to draw any conclusions about trends.<sup>185</sup> Sentencing for contravention offences is discussed in detail in Chapter 17.

The Victoria Police Manual and the Code of Practice make it clear that police are obliged to treat contraventions of FVIOs seriously. The Code of Practice states:

FVIOs and FVSNs must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police must lay charges for any contravention.<sup>186</sup>

Decisions to prosecute are based on the evidence gathered and should not be a subjective assessment by the responding police as to the seriousness of the contravention.<sup>187</sup>

Assistant Commissioner Cornelius reiterated this point during the hearings:

I don't think we could have made it any clearer in the Code of Practice just how seriously we want our members to take family violence related matters and the level of attention that they ought pay to them ... I have also been made aware of some of the public commentary and some anecdotes that I'm aware of around, 'Don't call us until you've got bruises' and that sort of commentary. I really want to take the opportunity here today to say to the community, but also more particularly to every serving police officer in Victoria Police, that is absolutely not in keeping with the expectations set out in the Code of Practice. Every breach of an intervention order, every act of family violence is required to be dealt with under the Code of Practice as a serious matter.<sup>188</sup>

A breach of an intervention order is a breach of an intervention order, and my expectation is that breaches will be charged ... and the offender will be held accountable for that breach.<sup>189</sup>

The Commission was told, however, that Victoria Police could do more to charge perpetrators for breaches of FVIOs, especially when the breaches involve non-physical abuse and may not as readily result in an assault charge. One victim of family violence said:

... [I]t is getting better, massive changes in police ... but breaches of intervention orders are still a joke. How many times do you have to go into there and complain? They think it is a joke and ignore you.<sup>190</sup>

Women's Legal Service Victoria submitted:

[T]here continues to be inconsistency in charging for breaches. In our experience as duty lawyers, there are number of reasons:

- police are reluctant to prosecute a breach if there is no corroborating evidence and they only have a complaint made by the victim.
- a distinction made by some police officers between 'technical' or 'non-serious' breaches and 'serious' breaches.<sup>191</sup>

This reasoning aligns with the evidence of victims suggesting that police might take action only if they see the breach as 'serious':

The police on duty basically told me to go away as they had real crimes to deal with. They said that it is not a breach of an intervention order to call someone and I couldn't prove that anything wrong had occurred. I urged them to look up my order and confirm that what he was doing was a breach. They said they couldn't see that. More importantly they gave no importance to the crime that was committed against me.<sup>192</sup>

Some victims suggested that police do not understand the serious effect that an apparently 'minor' breach can have on a victim; stating that '[I]f the victim is saying they are feeling fearful they should be believed. We are not delusional or imagining it'.<sup>193</sup>

Deakin University Centre for Rural and Regional Law and Justice and the Domestic Violence Resource Centre Victoria both raised concerns about the police response to breaches committed by electronic means, the former arguing that there is confusion about the rules of evidence in such cases.<sup>194</sup> At a community consultation one victim described her experience:

I was getting about 200 texts and messages in an 8-hour period but each one was not counted as a breach because the definition is consecutive days in a 7 day period, so it was counted as one. The police never really explained that.<sup>195</sup>

The Commission heard evidence that failure to act on breaches can undermine the integrity of the intervention order scheme, emboldening offenders and discouraging victims from reporting further breaches. The Federation of Community Legal Centres noted:

It gets cast as ‘just a minor breach’ but there will often be a series of them. Respondents are always testing the boundaries. Our clients make regular complaints to the duty lawyer about police not prosecuting breaches—particularly electronic communication breaches. This can lead to clients ceasing to report incidents when the violence may be more serious in the future.<sup>196</sup>

The Doncaster Community Care and Counselling Centre Inc.<sup>197</sup> and the Loddon Campaspe Community Legal Centre made similar points, submitting that, ‘A significant proportion had given up on making reports about breaches because of this. Others crafted their own solutions, like moving town, to feel safer.’<sup>198</sup>

Nevertheless, the Commission also heard that the police response to breaches is improving. Service providers at one community consultation said that until a year ago ‘there was this idea of a “technical breach” ... now ... a breach is a breach.’<sup>199</sup> At another community consultation, we were told that the establishment of a family violence team had changed local police attitudes to breaches from the historical view that ‘it’s your word against his’.<sup>200</sup>

## Workforce development

In addition to these issues associated with the front-line police response, the Commission identified consistent themes relating to workforce development—in particular, education, training, supervision and support. Chapter 15 discusses similar issues in relation to specialisation within Victoria Police and the role of family violence teams.

### Police education and training

The Commission heard evidence from a range of sources highlighting the importance of education and training in supporting an effective police response to family violence.<sup>201</sup>

Although writing in the US context, Eigenberg, Kappeler and McGuffe made observations that also apply in Victoria:

In general, training is critical because it allows police departments to demonstrate priorities and reinforce policies. Domestic violence training is essential, given the rapidly changing nature of domestic violence legislation, the unique attention given to the police response in these cases, and the unique nature of the crime itself.<sup>202</sup>

The 2013 Victoria Police review of the Code of Practice noted the importance of specialist family violence education and training for:

- ▷ looking behind a particular crisis or incident to obtain the full story<sup>203</sup>
- ▷ equipping police to make effective risk assessments and apply suitable risk management strategies—for example, training in identifying the primary aggressor<sup>204</sup>
- ▷ maintain police morale and a positively disposed culture, so as to avoid frustration and cynicism—particularly in relation to women who choose to remain at home with the perpetrator.<sup>205</sup>

### Current education and training arrangements

Victoria Police provided a range of documents to the Commission and gave evidence at the hearings to explain the current approach to family violence education and training. This is summarised in Table 14.2.

Commission personnel also attended the Police Academy to observe both theoretical and practical aspects of foundational training in family violence. The Commission greatly appreciated this opportunity, which helped us understand the current educational program, and provided first-hand exposure to the commitment of trainers and recruits alike.

Table 14.2 Victoria Police’s current approach to family violence education and training

Training type	Action
Specific purpose	<ul style="list-style-type: none"> <li>▷ 6500 police members received a half-day training session on the Code of Practice within 18 months of its introduction in August 2004.<sup>206</sup></li> <li>▷ 4500 police members were trained in the three months preceding the introduction of holding powers in 2006, via an online training package, in-van/in-station reference materials and a general refresher course.<sup>207</sup></li> </ul>
Foundational	<ul style="list-style-type: none"> <li>▷ Police recruits/probationary constables receive foundation training during a 33-week cycle at the Police Academy.</li> <li>▷ 17 dedicated family violence sessions are delivered, including one session on protecting children, one on personal safety intervention orders and two revision sessions. Practical skills are also assessed with three days of family violence practical applications.</li> <li>▷ Sessions are structured around the following modules: <ul style="list-style-type: none"> <li>▷ an introduction to family violence—including the nature of family violence, myths of family violence, factors that inhibit reporting, and the cycle of violence theory</li> <li>▷ Family Violence Protection Act</li> <li>▷ the Code of Practice</li> <li>▷ criminal options</li> <li>▷ firearms</li> <li>▷ holding powers</li> <li>▷ risk assessment—the L17 form</li> <li>▷ civil options</li> <li>▷ referral options</li> <li>▷ practical application of the knowledge.<sup>208</sup></li> </ul> </li> <li>▷ The Victoria Police Centre for Ethics, Community Engagement and Communications provides instruction to recruits on, among other things, the <i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> and the Victims Charter. This includes material on dealing with the challenges of family violence in diverse communities.<sup>209</sup></li> </ul>
Promotional	<ul style="list-style-type: none"> <li>▷ The Sergeants’ Qualifying Program includes a two-hour session on family violence, with the aims of: <ul style="list-style-type: none"> <li>▷ changing the thinking and language to do with family violence</li> <li>▷ understanding the psychology of being a victim</li> <li>▷ developing strategies for creating a robust victim support culture.<sup>210</sup></li> </ul> </li> <li>▷ Family violence is a topic in the planning and risk management section of the Senior Sergeants’ Qualifying Program, participants being required to apply a change-management process to a recidivist offender scenario.<sup>211</sup></li> <li>▷ The Constables’ Qualifying Program (a transition program for protective service officers) includes sessions focusing on family violence—including legislation, powers and procedures.<sup>212</sup></li> </ul>
Ongoing	<ul style="list-style-type: none"> <li>▷ Family violence advisors, pursuant to their standard operating procedures, are required to provide family violence training to members in their division.<sup>213</sup></li> </ul>

### On-the-job training

Police members stated unequivocally that on-the-job training is the most important part of gaining confidence in policing family violence.<sup>214</sup> The review of the Code of Practice also noted that police members said that, while the training at the academy is useful, there is limited time spent on each topic and the ‘real’ learning occurs on the job.<sup>215</sup> Academy personnel shared this view, noting that in the time available they can only provide foundational training that focuses on family violence law and the appropriate use of powers.<sup>216</sup>

The review of the Code of Practice also emphasised the important educative and awareness-raising function of family violence teams:

A standout issue in relation to quality of policing of family violence appeared to be associated with the presence and training offered by specialist family violence teams. The greater understanding of the dynamics of family violence (in particular the recognition of coercive control and the reasons for victim withdrawal from civil and criminal court proceedings), the stronger engagement with the [affected family member] and the stronger collaborations with external agencies came through in the interviews as subtle but consistent findings from those with the experience of the specialist teams.<sup>217</sup>

The review also found:

- ▷ Members with family violence team experience reported a more complete understanding of family violence procedures and how to facilitate positive outcomes, along with improved efficiency in completing administrative and processing requirements.<sup>218</sup>
- ▷ Members with family violence team experience were more likely to identify the L17 risk assessment process as a factor guiding their decision making.<sup>219</sup>
- ▷ Supervisors recognise that family violence team rotations lift capability and reduce the need for station-level micro-management.<sup>220</sup>
- ▷ Disaffection and frustration are more prevalent among police members without specialist family violence training.<sup>221</sup>

### **Opportunities for improving education and training**

A number of submissions to the Commission raised the need to improve the family violence education and training provided to police. The Police Association Victoria identified limitations with the current approach:

A new recruit at the Academy will spend approximately two weeks studying family violence. While one or two days are spent providing context to family violence as a social issue, the majority of this time is spent learning the increasingly complex and convoluted legislative and policy requirements necessitated by the interface of civil and criminal justice processes. Once on the job, members estimate that 60–70 per cent of their time on the frontline is spent tending to family violence matters. Despite this, additional training is organised and provided at the local level on an 'as needed' basis. This inconsistent approach to training is highly problematic for members.<sup>222</sup>

It also identified the need for different levels of family violence training, including more in-depth training for those entering or in specialist family violence roles.<sup>223</sup>

The Victoria Police submission noted the need to take a comprehensive approach to family violence education and training, including through:

... a Victoria Police Family Violence Centre of Learning to deliver a range of education programs to police members, tailored to rank, role and career stage. This would be a best practice hub based at the Victoria Police Academy dedicated to developing and embedding family violence learning throughout Victoria Police.<sup>224</sup>

The Commission notes the Victorian Equal Opportunity and Human Rights Commission's recent review of sex discrimination, sexual harassment and predatory behaviour in Victoria Police, which made recommendations about improving academic quality and consistency. VEOHRC recommended that People Development Command establish an academic governance body that includes independent expert(s) with a primary focus in the field of gender, sex discrimination and sexual harassment, to advise on academic policies and curriculums, and ensure consistent, evidence-based training and learning outcomes.<sup>225</sup>

### **Comprehensive and ongoing training on the nature and dynamics of family violence**

Safe Steps stated in its submission that despite dramatic improvements in the police response to family violence since the introduction of the Code of Practice, many police members are unfamiliar with the Code's requirements. Problems include that police:

- ▷ believe the perpetrator's account rather than that of the victim
- ▷ do not believe a woman who has a history of drug or alcohol use, and assuming her distress is a result of substance use
- ▷ dismiss women who make repeated reports—particularly if the woman has chosen to remain at home
- ▷ assume that both the woman and the man are in a mutually abusive relationship when there is evidence of the woman resisting abuse or defending herself
- ▷ assume that abuse in same-sex relationships is mutual
- ▷ assume that women who are agitated, distressed or anxious are not credible or reliable
- ▷ treat Aboriginal women and children poorly and not believing their accounts, leading to a reluctance to report
- ▷ treat women with a disability poorly, assuming their reports are unreliable or, if they have communication or behaviour support needs, disregard their reports in favour of the perpetrator's account.<sup>226</sup>

Safe Steps argued that this demonstrates the need for compulsory and comprehensive training on family violence and the Code of Practice—including specific training in identifying the primary aggressor in family violence incidents.<sup>227</sup>

Loddon Campaspe Integrated Family Violence Services Consortium, Darebin Community Legal Centre, the Law Institute of Victoria and the Australian Women Against Violence Alliance all called for improved training for Victoria Police, specifically focusing on the nature and dynamics of family violence;<sup>228</sup> understanding and responding to emotional and psychological abuse, in addition to physical and verbal violence;<sup>229</sup> and '[c]oordinated training for police, the community sector, judicial officers and court staff in all areas of family violence', including the specific needs of particular cohorts such as older people.<sup>230</sup>

Domestic Violence Victoria stated that it was '... unable to obtain detailed information about the training provided to Police, or how it is developed, reviewed and delivered'.<sup>231</sup>

... DV Vic endorses the recommendation made by No To Violence in their submission to the Royal Commission that all Victoria Police members, current and future, participate in a minimum two-day post-Academy introductory training on family violence, including components on perpetrator engagement and that this training be refreshed through one-day booster trainings on a two-yearly basis.

...

It is DV Vic's position that a multi-disciplinary, cross-sectoral collaborative approach informed by minimum standards and shared goals would constitute best practice for police training in a fully integrated system.<sup>232</sup>

The Commission notes that Victoria Police's review of the Code of Practice found that a greater understanding of the dynamics of family violence—particularly the use of coercion and control of victims and the reasons why a victim might withdraw support for civil or criminal proceedings—results in stronger police involvement with victims and support services.<sup>233</sup>

Domestic Violence Victoria's view that police training needs to be ongoing was shared by a number of others who made submissions to the Commission—among them No To Violence, Women's Legal Service Victoria, Gippsland Lakes Community Health and the Magistrates' Court of Victoria Family Violence Taskforce.<sup>234</sup>

### **Training in relation to specific population groups**

Another strong theme raised before the Commission concerns the need to equip police members to respond sensitively and effectively to the needs of various population groups.

Seniors Rights Victoria stressed the need for improved police training in relation to elder abuse;<sup>235</sup> the Eastern Elder Abuse Network also pointed out problems associated with a lack of training for police in elder abuse (including appropriate referral options) and called for an educational awareness raising campaign to address this.<sup>236</sup>

InTouch Multicultural Centre Against Family Violence highlighted the importance of cross-cultural training to assist police in responding to family violence involving people from culturally and linguistically diverse backgrounds. It stated that 'Although the vast majority of police officers who assist victims of family violence are professional and empathetic, many remain unaware of the barriers CALD women face when it comes to accessing police services.'<sup>237</sup>

The need for better cross-cultural training was also raised in a number of submissions.<sup>238</sup> The Women's Mental Health Network Victoria submitted that there is a need for strengthened police workforce development in relation to better understanding mental illness and its intersection with family violence.<sup>239</sup> The Victorian Gay & Lesbian Rights Lobby, Safe Steps and No To Violence all called for improvements to police members' sensitivity to victims of family violence in the lesbian, gay bisexual, transgender and intersex community.<sup>240</sup>

A number of Aboriginal community controlled organisations and Indigenous Family Violence Regional Action Groups also mentioned culturally appropriate practice by police and the need for training in this regard—noting, in particular, that where Koori police protocols are in place, progress has been made.<sup>241</sup> This is discussed further in Chapter 26.

### **Supervision, support and accountability**

Another theme in the evidence before the Commission was the importance of supervision and support in relation to quality assurance and performance monitoring, forming attitudes and the culture of police members, and dealing with the confronting nature of family violence.

As discussed in relation to training, most police learn how to respond to family violence via on-the-job training. This underscores the vital importance of supervision and support if there is to be a quality police response to family violence.

The Police Association Victoria pointed out the challenges family violence policing can pose for members early in their career as many police members are young and are expected to provide advice, guidance and support to people who are older than them or whose life experiences are vastly different to theirs.<sup>242</sup>

Domestic Violence Victoria stressed the importance of adequate supervision in such a challenging operational environment:

... some Police are concerned that new graduates' limited life experience can result in them experiencing vicarious trauma, or becoming desensitised to or overwhelmed by family violence. DV Vic has concerns about unstructured training in high pressure environments, which may not be adequately supervised nor subject to appropriate system-level oversight. Further, given that police are members of the broader community, DV Vic is also concerned about the risks of adopting myths and misconceptions about family violence.<sup>243</sup>

Victoria Police's review of the Code of Practice emphasised that the quality of supervision provided, together with the attitudes of supervisors towards family violence, are crucial:

Supervision is the only way to ensure that 'good habits' are formed so that procedures are comprehensively followed. Equally, poor supervision will promote poor habits and allows practice gaps to develop.<sup>244</sup>

Supervision and support arrangements are set out in the Code of Practice. The arrangements include the following:

- ▷ Police supervisors are required to check the appropriateness and quality of the police response to family violence incidents, including monitoring incidents via LEAP case management for compliance with the Code of Practice across the initial response, risk assessment and risk management and ongoing investigations, and keeping the victim updated on the progress of any criminal matters.<sup>245</sup>
- ▷ Family violence liaison officers who operate at every 24-hour police station, have a responsibility to monitor adherence to the Code of Practice.
- ▷ Family violence teams have a range of functions under the Code of Practice. In addition, their standard operating procedures outline their responsibilities for checking L17s and monitoring family violence incidents via LEAP case management.<sup>246</sup>
- ▷ Family violence court liaison officers (of which there are 15) have some quality assurance functions, including identifying and reducing errors in procedure and LEAP management.
- ▷ Family violence advisors (17 positions) are responsible for coordinating best practice responses to family violence across police divisions and have a range of functions with a strategic focus. The standard operating procedures for the role state that this can include conducting audits and case reviews to ensure compliance with the Code of Practice.<sup>247</sup>

Sergeant Deryn Ricardo, Family Violence Advisor for Eastern Region Divisions 5 and 6, and Sergeant Spriggs, provided insights into how this occurs in practice. Sergeant Ricardo stated that the demands on family violence liaison officers make it necessary for family violence advisors to assist with quality assurance:

I consider it important that responsibility for overseeing and monitoring family violence incidents is taken on by the FV Advisor and not left solely with the FV Liaison Officer at local stations. This is because the FV Liaison Officer role, particularly in rural areas, is often one of a number of portfolio duties that the Liaison Officer has to perform, resulting in significant time constraints on their family violence duties. Compliance checking of an incident should be performed in a timely fashion so that if there are any issues, oversights or additional action required, this can be addressed immediately.<sup>248</sup>

Sergeant Spriggs outlined some of the proactive methods for monitoring compliance with the Code of Practice:

I encourage Family Violence Liaison Officers to access and review family violence related LEAP incidents, conduct audits and case reviews to ensure compliance with the Code of Practice, and to liaise with me to establish consistency and compliance through training and information provision.<sup>249</sup>

Assistant Commissioner McWhirter explained how the various positions with supervisory and quality assurance functions work together to provide a comprehensive framework to ensure accountability for compliance with the Code of Practice:

We have a whole range of supervisory responsibilities around family violence in terms of from the initial commencement of the L17 into the LEDR system in terms of authorisation of that and reviewing that. The family violence liaison officers have to review the L17 process in terms of the approach by the members. Any briefs of evidence that actually come from a family violence environment or situation all have to be checked in terms of the actual credibility of what's taken place by the members and validating what's taking place.

Family violence teams, as we have learnt this morning, clearly have a responsibility in terms of checking the work that's done on the front-line by the actual front-line service delivery by our members. So, there are a whole range of accountabilities in place to actually check to make sure that the members in the first response do the right thing.<sup>250</sup>

As noted, the Commission was informed that the Code of Practice is not always followed.

The Code of Practice also outlines processes available for people who are dissatisfied with the services police provided. It states that in the first instance this should be dealt with at the local level by a family violence liaison officer or another supervisor or the officer in charge of the relevant station. Unresolved matters can be referred to the family violence advisor or the family violence team.

However the Commission heard from a range of sources that mechanisms for dealing with both individual complaints and systemic feedback are deficient and need to be improved. A family violence victim argued that 'there should be an avenue for you to report that person and they can be disciplined'.<sup>251</sup>

Dr Chris Atmore, Senior Policy Advisor at the Federation of Community Legal Centres, told the Commission:

... a Code of Practice doesn't really mean much if when there is a breach and it's not responded to properly and a victim complains about it nothing happens. There has to be accountability and publicly transparent complaint processes when what the Code of Practice says you should not do happens. At the moment that's not our experience. We have many frustrated clients who say, 'This didn't happen to me. I have tried to pursue it with police or my advocate tried to pursue it with police. We got nowhere'.<sup>252</sup>

Domestic Violence Victoria raised the need for a formal process of feedback and evaluation between family violence services and police in order to ensure continuous improvement '... so that errors and omissions are routinely detected, systems reviews conducted at regular intervals (quarterly or bi-annually) and regular multilateral evaluation meetings [are held]'.<sup>253</sup>

Some submissions took accountability a step further and proposed systematic audits of police compliance with the Code of Practice.<sup>254</sup>

Victoria Police was receptive to the proposal to establish a standing body comprising police, service providers and other stakeholders (such as courts) that could provide feedback on concerns and complaints about police processes at the systemic level:

... in our submission we are very clear on having a strong governance framework in relation to family violence and ... what that governance framework would provide would be exactly that, some permanency in relation to engagement with the sector, right across government as well, in terms of listening to those sort of concerns, so Victoria Police as the first responders in most cases can actually respond to those criticisms if they are there.<sup>255</sup>

### **Culture and attitudes**

As outlined, the Commission heard that some police members continue to hold negative or dismissive attitudes towards victims of family violence. The Commission also notes recent work by the Victorian Equal Opportunity and Human Rights Commission in relation to sex discrimination, sexual harassment and predatory behaviour and work by the Independent Broad-based Anti-Corruption Commission on predatory behaviour against vulnerable persons.<sup>256</sup>

The VEOHRC report stated that ‘... Victoria Police has been a leader in reforming community understanding and responses to family violence and sexual assault ... providing a model for police services in Australia and [overseas]’.<sup>257</sup> In calling for Victoria Police to bring the same urgency to tackling sex discrimination and sexual harassment in the force however, VEOHRC made a number of concerning findings in relation to Victoria Police culture, including the following:

- ▷ There is an entrenched culture of ‘everyday sexism’, along with unequal power between men and women and rigid adherence to gender stereotypes, supported by structural and attitudinal barriers to gender equity.<sup>258</sup>
- ▷ Sexual harassment is experienced within a broader pattern of sexist hostility that has the tacit endorsement of supervisors, who often fail to set appropriate standards or to act on harmful workplace behaviours.
- ▷ Management quality and understanding of gender inequality is inconsistent, while station officers in charge and sergeants have the most direct effect on shaping police members’ attitudes.
- ▷ The workplace culture makes it challenging to recruit and retain women.
- ▷ It is more difficult for women to be promoted, and women are significantly under-represented in supervisory and management roles.
- ▷ Workplace values and behaviours are not seen as a central element of performance.
- ▷ Specialisation within Victoria Police can undermine equality, some work areas such as crime and homicide being seen as traditionally performed by men, and sexual offences and the mounted branch by women.
- ▷ Many personnel do not report sexual harassment because of the convoluted complaint mechanisms, which lack confidentiality as well as a fear of being considered disloyal or a feeling that it would not make a difference.<sup>259</sup>

The VEOHRC report also found, however, that many men and women in Victoria Police are and will continue to be committed to cultural change and that many reported an extremely positive working environment.<sup>260</sup> The report sets out detailed recommendations within a three-phase action plan to reset the organisational culture of Victoria Police.<sup>261</sup> Among the actions of particular interest to this Royal Commission are the following:

**Recommendation 2:** Victoria Police establishes independent advisory structures to guide the intent and implementation of the Review's recommendations.

**Recommendation 3:** Victoria Police develops a whole-of-organisation Gender and Diversity Vision and Strategy linked to performance and capability.

**Recommendation 9:** Victoria Police reviews its training and education functions to align learning intent and future capability needs as expressed in the Education Master Plan with organisational processes.

**Recommendation 12:** Management performance in workplace equality and respect should be a compulsory performance field or performance appraisal and reward and incentive systems. Victoria Police should review and identify the appropriate tracking and recording mechanism(s) for inappropriate workplace behaviours that warrant ongoing supervision and management.

**Recommendation 13:** Victoria Police establish a workplace harm model as outlined in the Review, including

- Immediate establishment of an external 'safe space' service to provide confidential support to victims/targets of workplace harm
- An internal victim-centric workplace harm unit to triage and case manage internal complaints about workplace harm
- An Independent Advisory Board (IAB) to provide expert advice and support to the Workplace Harm Unit.<sup>262</sup>

## Family violence involving police

The Code of Practice stresses that the police response to a family violence incident in which a police member is either the victim or the perpetrator of family violence should be of the same standard as that afforded any other incident: a thorough investigation is undertaken, civil and criminal options are pursued as appropriate, and the primary aggressor is identified. The Code also requires that a supervisor be notified and must attend the incident. If a criminal offence has occurred, including a breach of an FVIO, the Victoria Police Professional Standards Command must be notified. There are further reporting requirements in the Victoria Police Manual for employees serving an FVIO on another employee and for an employee being served with an FVIO.<sup>263</sup>

The terms of reference for the VEOHRC inquiry explicitly excluded consideration of the prevalence of family violence where Victoria Police personnel are alleged perpetrators.<sup>264</sup> The VEOHRC report did, however, draw a link between poor attitudes in Victoria Police and the interaction between police members and the community:

The need to ensure a gender balance that reflects the community it services is crucial, particularly for building safety and trust in the organisation by women who need the help of Victoria Police to feel confident they will be believed and treated with respect. To maintain and continue to build community confidence, Victoria Police will need to model safety and respect among all its employees.<sup>265</sup>

The report also noted that police work can be conducive to the forming of relationships between co-workers, and that culturally Victoria Police is like a family to its members, one female interviewee stating:

You can't address family violence in the community unless you address family violence in the force. Violence against women in the force is a form of family violence because Victoria Police is 'home' for so many people. It's our blue family. But it's not called out ...<sup>266</sup>

This Royal Commission was able to locate little published research or statistical information on family violence committed by police members in Australia. Mr Alan Corbett, who presented a submission, directed the Commission to an article he authored containing statistical information obtained from Victoria Police under freedom of information laws:

Data, extracted from VicPol's Register of Complaints and Serious Incidents Database (ROCSID), revealed that in the calendar years 2011–2014, a total of 190 Victorian police of various ranks were respondents to a court issued Family Violence Intervention Order ...

However, these statistics are very likely to be a gross underestimate of the actual incidence of PODA [police officer domestic abuse].<sup>267</sup>

Limited research on the prevalence of family violence committed by police has been undertaken in the United States. Some studies suggest that the rate of domestic violence in law enforcement families is much higher than in the general population.<sup>268</sup> More recent research notes that, while two small studies from the early 1990s point to higher rates of domestic violence in law enforcement families, no large population-based studies have been conducted since that time.<sup>269</sup> The authors went on to quote the US National Institute of Justice, which has stated that police domestic violence is 'an almost entirely unstudied phenomenon'.<sup>270</sup>

Despite the lack of data, Mr Corbett's submission raises concerns about the prevalence of family violence committed by police members, the barriers facing victims, and the lack of adequate acknowledgment of and response to this issue by Victoria Police and political leaders.<sup>271</sup> Among other things, Mr Corbett's submission asserts the following:

- ▷ Victims of family violence perpetrated by police members can be distinguished from other victims because they must seek help from the organisation the perpetrator belongs to, creating additional barriers to reporting.
- ▷ Police culture can prevent members from speaking out and taking action against colleagues who commit family violence.
- ▷ Family violence perpetrated by police members undermines public trust and thus undermines all police in preventing and responding to family violence.
- ▷ Victoria Police should, in conjunction with other Australian police services, formulate a comprehensive, transparent, stand-alone policy on family violence perpetrated by police members and should publish existing policies and statistics online.<sup>272</sup>

Mr Corbett's submission referred to model policies published by the International Association of Chiefs of Police (2003) in the United States and the Association of Chief Police Officers of England, Wales and Northern Ireland (2004, 2008), while noting that the former has had scant take-up, and the latter became outdated as a result of regulatory change.<sup>273</sup>

Table 14.3 summarises the main components of the International Association of Chiefs of Police model.<sup>274</sup>

Table 14.3 Primary components of the International Association of Chiefs of Police model: a summary

Policy component	Key points
Prevention and training	<p>Zero tolerance policy towards police officer domestic violence, with ongoing training to every officer throughout all phases of their career.</p> <p>Development of training on family violence and the zero tolerance policy through ongoing partnerships with local victim advocacy organisations.</p>
Early warning and intervention	<p>Pre-hire investigation and screening-out of candidates with a history of perpetrating violence.</p> <p>Periodic outreach to officers and their family members within information on the policy, the point of contact within the police service and local support service contacts.</p> <p>Provision of non-punitive early intervention and referrals.</p> <p>Supervisors to document any patterns of problematic behaviour, review with the officer, report and refer to psychological and other services.</p> <p>Officers who fail to report knowledge of abuse or who fail to cooperate in investigating it will be subject to severe discipline.</p>
Incident response protocols	<p>All domestic violence calls or reports will be documented.</p> <p>Reports of possible criminal activity against police will be treated in the same manner as domestic violence reports against civilians, and will also be forwarded through the chain of command.</p> <p>Dispatchers will immediately notify the duty and dispatch supervisor of any domestic violence call involving an officer.</p> <p>Upon attendance at a domestic violence call, the response unit will immediately notify dispatch and request a supervisor of higher rank than the involved officer to report to the scene. The supervisor will notify the Chief and the accused officer's immediate supervisor as soon as possible.</p> <p>The Chief will ensure that all officers are debriefed, including a review of confidentiality requirements and a direct order prohibiting discussion of the incident outside official inquiries.</p>
Victim safety and protection	<p>Police departments will work with community resources and advocacy agencies to connect victims and their children with services.</p>
Post-incident administrative and criminal decision	<p>Police departments will conduct separate parallel administrative and criminal investigations in a manner that maintains the integrity of both processes and promotes zero tolerance.</p> <p>If warranted, administrative action will be taken as soon as possible independent of any criminal proceedings.</p> <p>The officer's departmental, union and legal rights will be upheld.</p> <p>Administrative investigations will be conducted by Internal Affairs Departments. Administrative action will also be taken against officers who had knowledge of violence but failed to notify the department or interfered with the investigation.</p> <p>Criminal investigations will be conducted by the domestic violence unit, or if none exists, an investigations unit or detective division.</p>

Source: Based on International Association of Chiefs of Police, 'Domestic Violence by Police Officers: Concepts and Issues Paper' (United States National Law Enforcement Policy Center, July 2003).

## The way forward

Every day and night, across our state, Victoria Police members respond to family violence incidents—on average about one every eight minutes. For many women and their children, police not only provide protection at a time of crisis but are the entry point to the broader family violence system. The quality of the police response is therefore crucial.

There is no doubt that Victoria Police has made considerable progress in its front-line response to family violence in the past 15 years, but the evidence before the Commission demonstrates that there remains room for improvement. High-quality police risk assessments, in particular, are essential to ensuring an effective police response and to keeping women and children safe.

The Code of Practice for the Investigation of Family Violence has been transformative, setting out clear standards of practice in recognition that the nature and dynamics of family violence mean that family violence is not just another crime. Similarly, introduction of the L17 has brought considerable improvements: there are now many more formal referrals to family violence services and men's behaviour change services. Nevertheless, some front-line police still have difficulties with the L17 system and it does not yet provide an unambiguous, consistent pathway to a more specialist police response.

Central to the success of these previous reforms, and to future improvement, is the skill and commitment of police members. Ensuring that police members have the training, support and supervision to properly fulfill their role is integral to meeting community expectations and to keeping women and children safe. This learning needs to continue throughout police members' careers.

The Commission heard that there is a number of areas where focused effort is required to improve the police response to family violence—for example, improving the identification of the primary aggressor, better investigating breaches of FVIOs, and building relationships with specific communities. The Commission makes recommendation in relation to education and training; supervision, support and accountability; and the culture of Victoria Police, including how the organisation deals with family violence involving police personnel.

Responding to family violence is 'core business' in modern policing. A broad program of work is required to embed good practice throughout Victoria Police, so that all police take family violence seriously and see it as an essential part of their role.

## **Risk assessment and risk management**

The Victoria Police L17 risk assessment and risk management process has been a key factor in improving the police response to family violence and engaging victims with family violence services. There are, however, a range of interrelated matters that still need attention, including the following:

- ▷ Police members' proficiency in conducting risk assessments.
- ▷ Some police members view the L17 process as a form-filling exercise and understanding of the purpose and importance of risk assessment is variable.
- ▷ Some police members view the risk assessment process as relating to a single incident, as opposed to a pattern of abuse.
- ▷ The L17 process is administratively burdensome for police and, in a high-demand environment, this can contribute to quality concerns.
- ▷ The lack of mobile technology results in police completing L17s back at the station.
- ▷ Police have limited guidance on assessing risks to children.
- ▷ The ad hoc nature of feedback loops detracts from quality assurance and can add to police cynicism about the process.
- ▷ L17 referrals are overwhelming to family violence services and add to demand pressures on Child Protection.
- ▷ Police have limited ability to share information relating to risk assessments; for example, perpetrator information cannot be provided to women's services.
- ▷ Risk assessment processes are not dynamic, and there are no mechanisms for integrating successive risk assessments or providing updated information.

To resolve this situation, the Commission urges Victoria Police to improve the education and training provided to recruits and police members in relation to the purpose, importance and methodology of risk assessment. A revised approach to education and training will increase the level of understanding of the nature and dynamics of family violence throughout the force. This will be reinforced through greater access to specialist family violence teams and positions for support, advice and quality assurance and a focus on supervisor knowledge and capability, recognising the central role that supervisors play in setting cultural and practice standards and expectations.

Elsewhere in this report the Commission makes a number of recommendations that will streamline and simplify the risk assessment process for police. For example, we recommend that the CRAF be reviewed and that an actuarial tool be included in it—see Chapter 6. In addition, in Chapter 15 the deployment of mobile devices is recommended, to facilitate L17 risk assessments and to allow referrals to be prepared in the field. The benefits of reducing the administrative burden associated with L17s will be twofold: front-line police will be able to spend less time doing paperwork and more time providing policing services (including responding to family violence), and the cynicism some police feel towards the current risk assessment process will be minimised. It is important to note that the L17 feedback loops are a mutual frustration for Victoria Police and the specialist family violence system. This is discussed in Chapter 13. Addressing both perspectives will be important if we are to make risk assessment and management processes more robust.

### **L17s for children**

The Commission gave careful consideration to the Victoria Police proposal for a single intake point in relation to children. The Commission agrees with Victoria Police that the current L17 arrangements can create duplication and that streamlining is required. To assist with this, elsewhere in this report we recommend the establishment of single, area-based intakes into specialist family violence services for women, Child FIRST/Integrated Family Services and perpetrator programs. We refer to these as Support and Safety Hubs, and discuss the proposal in detail in Chapter 13.

Once the hubs are established (by 1 July 2018), all L17s other than those that must be sent to Child Protection will be sent to the local Support and Safety Hub for assessment and action. So, instead of sending a separate L17 for the perpetrator, the victim, and potentially, the child, the vast majority of L17s will be able to go to one point.

The Commission chose not to recommend including Child Protection in the Support and Safety Hubs because that could overwhelm and dilute the focus on family violence. Nonetheless, each hub will have a community-based child protection practitioner; this will give police members greater confidence that the best interests of children, including any protective concerns, are being adequately considered as part of the intake and risk assessment conducted at the hub.

Hub providers will also be required to give feedback to Victoria Police on the outcome of police referrals, and the Commission also recommends introducing formal mechanisms so that hubs can provide feedback on the quality of Victoria Police risk assessments. This would allow the hubs to quickly and easily follow-up with police and also identify individuals and areas within Victoria Police that would benefit from improved supervision, training, additional specialist support or the provision of additional resources. The Commission also recommends that consideration be given to having, as part of each hub, a family violence worker embedded in local police family violence teams or alternatively, to police participating in triage with the hub.

The hub model will also address the static nature of risk assessment under the current system. For example, the Commission's recommendations in relation to information sharing in Chapter 7 would see hubs, service providers and police sharing information that is pertinent to risk assessment and risk management, using a Central Information Point led by Victoria Police and, at the local level, through collaborative relationships.

Finally, the hub model is premised on an expansion in the capacity of local Integrated Family Services and specialist family violence services (including men's behaviour change programs), so police can make referrals comfortable in the knowledge that the service system has the ability to intervene in a meaningful way.

## Identifying the primary aggressor

The Commission recommends strengthening police practice in relation to identification of the primary aggressor through improvements to training, supervision and quality assurance, procedural changes and closer working relationships with specialist family violence services.

The Code of Practice for the Investigation of Family Violence is a sound framework to guide police members in identifying the primary aggressor and reflects primary aggressor statutes in other jurisdictions. Indeed, the relative lack of controversy surrounding dual arrests in Victoria compared with the experience in other jurisdictions shows that the Code of Practice and other police initiatives have been successful in guiding police decisions.

The Commission also acknowledges that there are male as well as female victims of family violence, and identifying the primary aggressor is not simply a matter of ‘choosing’ the male. Neither does the Commission underestimate the complexity of the police task in identifying the primary aggressor at challenging and emotionally charged family violence incidents, and in the context of increasing demands on police services. Nonetheless and despite the lack of research, the Commission is satisfied on the basis of anecdotal evidence from a broad range of sources that police do continue to misidentify the primary aggressor in family violence incidents. Ms Tucker suggested that it may be commonplace. This can have dire consequences for a victim’s safety and access to support services. It re-victimises her and is a missed opportunity to hold the perpetrator to account, and it diverts scarce justice system resources away from where they are needed.

The Commission does not recommend providing statutory guidance in relation to identification of the primary aggressor. This did not emerge as a major concern in the evidence received, and in any case with the view expressed in the Australian–New South Wales Law Reform Commission report, that this difficult and nuanced task is better dealt with through education, training and police codes of practice. Victoria Police should work to strengthen the following:

- ▷ the accuracy of the primary aggressor identification process
- ▷ members’ ability to be sensitive to the primary victim when seeking to identify the primary aggressor
- ▷ any remedial measures to be taken should the primary aggressor be wrongly identified—for example, withdrawing FVSNs, withdrawing applications for FVIOs, or notifying the Victims Support Agency when there has been an inaccurate identification
- ▷ amending LEAP processes to facilitate the removal of the name of a person wrongly identified.

Foundational, promotional and ongoing training for police members in family violence should include investigating and identifying the primary aggressor and victims. Training for police supervisors is particularly important, in view of their vital role in guiding the actions of front-line police and ensuring service standards are maintained. For example, supervisors should be alert to cross-applications, and either take corrective action as early as possible or identify additional support, training or oversight required by individual members.

The Commission also considers that police family violence specialist positions will play a more prominent role in helping general duties members respond to family violence, including identifying primary aggressors. General duties police and supervisors should be able to draw on the advice and expertise of specialist family violence positions—family violence liaison officers and family violence team members—in real time to assist with identifying the primary aggressor in complex cases. Specialist positions will also have increased capacity to perform a quality assurance and monitoring role.

The Commission considered the ALRC–NSWLRC report’s position that skilled counsellors should attend family violence incidents with police. We do not think this is feasible at present because of the high number of family violence incidents in Victoria. However, we have made a number of recommendations aimed at promoting multi-disciplinary models, including options to embed family violence workers from Support and Safety Hubs and other services within police. This will provide further specialist resources to offer advice and support to general duties police, particularly in complex cases.

The creation of Support and Safety Hubs, as recommended in Chapter 13 of this report, will also afford an opportunity to improve quality assurance in relation to the identification of primary aggressors. Hubs will facilitate stronger more efficient engagement with victims and perpetrators of family violence, and allow errors in the identification of the primary aggressor to be quickly brought to the attention of police and corrected.

The Commission also reflected on the debate in the literature about the appropriateness of the term 'primary aggressor'. Once again, this did not emerge as a matter of great concern in the evidence it received. In any case, the term 'primary aggressor' is well known to both police and family violence services. Improving police practice would be better served by retaining the existing terminology, cognisant of the significant changes that will be experienced throughout the system in response to the Commission's recommendations. Once service standards and levels of consistency are raised, police and the broader service system might wish to revisit the terminology.

## Recommendation 41

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to ensure it provides suitable guidance on identifying family violence primary aggressors [within 12 months]. This includes:

- ▷ procedures for amending the Law Enforcement Assistance Program (LEAP) when a service provider or a Support and Safety Hub subsequently informs Victoria Police that a person is not the primary aggressor
- ▷ details of specialist support available to assist in identifying the primary aggressor.

Victoria Police should provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors.

## Workforce development

There is compelling evidence that police members who have a strong understanding of the nature and dynamics of family violence are better equipped to provide sensitive and effective service responses.

### Improving police education and training

Education and training throughout police members' careers is central to responding efficiently and effectively to the complex area of family violence. The Commission acknowledges the commitment and efforts of specialist instructors at the Police Academy and the local training initiatives delivered by family violence advisors. The preponderance of evidence it received, however, revealed that family violence education and training needs to be greatly strengthened within Victoria Police.

Although force-wide family violence training was delivered as part of the implementation of the Family Violence Protection Act and foundation training for all recruits includes family violence, many longer serving police members did not receive the level of training that is now provided at the academy.

The Commission therefore supports Victoria Police’s recommendation for the creation of a faculty-style Centre of Learning for Family Violence within People Development Command at Victoria Police. Together with Family Violence Command, the Centre for Learning should be responsible for the following:

- ▷ conducting a family violence education and training needs assessment of Victoria Police—including benchmarking against best practice
- ▷ developing a Victoria Police Family Violence Education and Training Strategy setting out how these needs will be met, through a mix of classroom-based, flexible and on-the-job methodologies
- ▷ developing content, supporting materials and delivery mechanisms for implementing the strategy
- ▷ working closely with the family violence sector in performing these tasks—using co-design approaches where appropriate
- ▷ coordinating with partner agencies and whole-of-government governance mechanisms so that Victoria Police education and training reinforces common understandings and approaches essential for responding to family violence system
- ▷ coordinating with developments at the national level, including with the Australia New Zealand Policing Advisory Agency.

The Royal Commission notes the Victorian Equal Opportunity and Human Rights Commission’s recommendation that People Development Command establish an academic governance body.<sup>275</sup> If such an academic structure is established, Victoria Police should consider including family violence expertise on the body.

In the Commission’s view, the Centre for Learning and Family Violence Command should be guided by a number of principles:

- ▷ Victoria Police members need comprehensive education and training in the nature and dynamics of family violence, in addition to legal and procedural requirements.
- ▷ Victoria Police members need comprehensive education and training in how to deal sensitively with family violence affecting marginalised population groups within the community.
- ▷ Training should be tailored to the role of particular police members for example, the training needs of those performing specialist family violence roles differ from those of general duties police.
- ▷ The family violence sector should be closely engaged in developing education and training curriculums for Victoria Police.
- ▷ Police members should be given regular refresher training on family violence.
- ▷ Promotional training programs should include material on family violence.
- ▷ Additional education and training should be provided to members and/or stations where problematic service responses have been identified.

The Commission also notes the evidence associated with the limitations of classroom-based training in relation to the policing context, and the importance of on-the-job learning. Well-trained supervisors who understand the dynamics of family violence and are sensitive to victims’ needs have a strong influence on the attitudes and performance of general duties members in the family violence field (and therefore on the victim experience). Family violence should be at the heart of all training for promotion for all ranks.

## Recommendation 42

Victoria Police establish a Family Violence Centre of Learning with external academic governance to improve family violence education at all levels in the organisation [within two years].

## **Supervision, support and accountability**

Despite the detailed Code of Practice and the supervision and quality assurance procedures in operation within Victoria Police, the Commission became aware of many examples of poor service levels. More needs to be done to ensure consistent compliance with the Code of Practice.

The Commission notes that, because of the prevalence of family violence, front-line police members will continue to shoulder much of the responsibility for the response. These members, often young and relatively inexperienced, need effective support and supervision to meet required service levels in compliance with the Code of Practice and to cope with the challenging and often confronting nature of family violence policing. This is doubly important in view of the influence of supervisors in setting culture and attitudes.

Implementation of recommendations made elsewhere in this report will lead to improvements in the quality of supervision and support provided to front-line police members. In particular, the Centre of Learning for Family Violence will assist in the development of education and training material for those in supervisory roles, in terms of their understanding of the nature and dynamics of family violence, their proficiency with the Code of Practice and the setting of cultural values.

Enhanced education and training will therefore improve the quality of supervision provided to front-line police members. It will also raise the proficiency of members themselves in policing family violence in compliance with the Code of Practice.

The Commission also proposes that a clearer specialist family violence career path be established in Victoria Police. This should take into account the need for family violence liaison officers and family violence teams to be adequately resourced to effectively fulfil their duties—including their supervisory, support and quality assurance responsibilities. In this regard, the Commission considers that Victoria Police needs to build capacity for more proactive, comprehensive quality assurance practices. It appears at present that much of the police quality assurance effort focuses on the adequacy of the initial response, as encapsulated by the L17 risk assessment and management process. This is probably a result of demand pressures on supervisors and those in specialist family violence positions.

While the adequacy of the initial response is very important, there were concerns about non-compliance with the Code of Practice, both in relation to the initial and the ongoing police response. The concerns related to, among other things, a lack of follow-up with the victim before court appearances, a failure to provide updates on criminal charges, delays in the service of orders (or applications for substituted service) and, importantly, failure to act on reports of breaches of intervention orders. Chapter 15 also discusses concerns about compliance with other police procedures in family violence cases, including the Victoria Police Intelligence Doctrine and the Advancing Investigation Management Compliance Package.

The Commission considers that Victoria Police should increase its emphasis on auditing as a quality assurance tool. This could include Family Violence Command providing guidance and setting targets for the conduct of regular file audits and case reviews by specialist family violence positions. This should also include a mix of random audits as well as targeted activity where compliance shortcomings are identified—for example, through performance levels, feedback from the family violence sector or patterns of complaints. The opportunity should also be taken for some audits and file reviews to seek and incorporate feedback from family violence victims.

Audits should be viewed as an opportunity to increase compliance levels with the Code of Practice, rather than as a punitive exercise. For example, audits might bring to light systemic problems requiring amendments to the Code of Practice or education and training curriculums or individual member or station problems warranting the delivery of specific training initiatives or other actions at the local level—for example, in relation to non-compliance with the code in relation to investigation breaches of family violence intervention orders.

In addition to these regular operational-level audits, every five years, there should be an independent, force-wide audit of compliance with the Code of Practice and other key procedures relating to family violence every five years. The results of this audit should be published, along with a Victoria Police response setting out how the matters raised will be remediated.

Audits will be unlikely to pick up instances of police members failing to record an interaction with a member of the public, in breach of the Code of Practice. For example, the Commission learnt of many instances in which victims contacted a police station or informant directly to report a breach and this was not acted upon. This is very concerning not only because the immediate response might be inadequate but also because this information will be invisible to the broader family violence system, hampering ongoing risk assessment and management.

Improved education, training and supervision will help to allay these concerns, although the Commission also considers that complaint mechanisms need to be clearer and communicated more effectively.

In developing a more clearly defined family violence specialist career path, Victoria Police should be more prescriptive about the functions of various specialist positions in considering complaints about police responses, including escalation pathways. These functions should be outlined in some detail in the Code of Practice, and victims should be given clear information about their options if they want decisions relating to their case reviewed. The Code of Practice should also note that individuals have the right to make a complaint to the Independent Broad-based Anti-corruption Commission.

Finally, the Commission is concerned about the risk of vicarious trauma being suffered by police members as a result of exposure to family violence. Victoria Police should give further detailed consideration to this and determine whether any changes in practice or procedure are advisable so that members have adequate access to support and supervisors have the capability and tools they need to prevent and manage this risk. The Commission discusses vicarious trauma across a range of professions that work with victims and perpetrators of family violence in Chapter 40 and notes that Victoria Police is currently conducting an investigation into improving the mental health of police personnel.

### **Recommendation 43**

Victoria Police ensure that specialist family violence position holders perform regular random file and case reviews to monitor compliance with the Victoria Police Code of Practice for the Investigation of Family Violence and other important procedural requirements relating to family violence—for example, in relation to investigations of contraventions of family violence intervention orders. Victoria Police set timing targets for these file and case reviews [within 12 months].

### **Recommendation 44**

The Victorian Government and Victoria Police establish a regular cycle of comprehensive and independent audits of Victoria Police's compliance with the Victoria Police Code of Practice for the Investigation of Family Violence. The results of the audits should be published, and include, among other things, any divisional variation and the measures that will be taken to resolve any concerns.

## Cultural considerations

The Commission notes the concerning cultural norms and attitudes the Victorian Equal Opportunity and Human Rights Commission identified within Victoria Police relating to sexism, adherence to rigid gender stereotypes and gender inequality. Such a finding is congruent with the concerns we heard from some victims and stakeholders in relation to inconsistent police responses to family violence and the persistence of dismissive attitudes among some police members. Likewise, VEOHRC's findings are consistent with evidence about attitudes among some work units within Victoria Police, that family violence is a 'general duties problem', and that there is a tendency to give priority to other types of crime through tasking and coordination processes.

VEOHRC's work also underscores the importance of supervisors and other leaders in setting and maintaining workplace values standards. The following statements by then Chief Commissioner Ken Lay, APM, speaking in relation to the broader community, are apposite:

Our culture is filled with men who hold an indecent sense of entitlement towards women.

Our culture is heavy with warped and misspent masculinity.

And every single day the casual groping and lewd comments that go unchallenged erode our standards.

And if none of us are saying anything, then this feral atmosphere gets worse, until it becomes an endorsement of violence against women.<sup>276</sup>

The Commission is also concerned that the predominance of these attitudes might diminish public confidence in the ability of police to respond to family violence sensitively and effectively. This could create barriers to reporting violence and put victims at risk. It could also hinder the recruitment of police members and employees with the diverse skills and experience that will underpin a more effective response to family violence in the future.

We therefore endorse VEOHRC's recommendations, noting that successful implementation of cultural change and the creation of a more diverse, gender equitable workplace will complement and facilitate implementation of the recommendations the Royal Commission makes in this report.

## Police employees and family violence

The Commission has noted elsewhere in this report that family violence is insidious, and affects the whole community. It stands to reason therefore that Victoria Police—which itself is a reflection of the broader Victorian community—will have within its ranks perpetrators and victims of family violence.

Noting the absence of published research and data on this subject, the Commission considers that there are sound reasons for Victoria Police to focus on family violence affecting its members as a matter deserving of special attention. Among these reasons are the following:

- ▷ VEOHRC found that there are cultural attitudes held among members of Victoria Police that are consistent with family violence risk factors.
- ▷ VEOHRC found that the nature of police work is such that it is not uncommon for intimate relationships to form between colleagues.
- ▷ Victims of family violence perpetrated by police members can face additional barriers to reporting.
- ▷ Transparency and rigour in relation to how Victoria Police deals with family violence within its own ranks are critical to ensuring that the public has confidence in the ability of police to respond effectively to family violence in the broader community.

Although the Code of Practice and the Victoria Police Manual set out requirements for a supervisor to attend any family violence incident involving a police member, the Commission considers it timely for Professional Standards Command to conduct a review of Victoria Police policies and procedures in this regard. The review should consider the following, among other things:

- ▷ any synergies with recommendations made by VEOHRC—including any potential family violence role for the ‘external safe space’ service and the Workplace Harm Unit, along with the streamlining and simplification of the police disciplinary system
- ▷ the relevance and desirability of elements of the model policies developed by the International Association of Chiefs of Police and the Association of Chief Police Officers of England, Wales and Northern Ireland
- ▷ intersections with family violence perpetration among Victoria Police personnel and any instances of predatory behaviour towards family violence or sexual assault victims in the community.

## Recommendation 45

Victoria Police’s Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence [within 12 months]. The review should consider:

- ▷ the adequacy of and any necessary improvements to current policies and procedures
- ▷ best-practice approaches and model policies developed in other Australian jurisdictions and internationally
- ▷ potential synergies with Victoria Police’s response to the Victorian Equal Opportunity and Human Rights Commission’s independent review of sex discrimination and sexual harassment in Victoria Police.

## Endnotes

- 1 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 2.
- 2 Ibid.
- 3 Domestic Violence Victoria—03, Submission 943, 6.
- 4 Victoria Police, above n 1, 8.
- 5 Ibid 9.
- 6 Ibid 8.
- 7 Ibid 17.
- 8 Ibid 20.
- 9 Victoria, Parliamentary Debates, Legislative Council, 25 March 1987, 564 (The Hon JH Kennan).
- 10 Ibid.
- 11 Victoria Police, above n 1, 31.
- 12 *Family Violence Protection Act 2008* (Vic) ss 53, 74.
- 13 An application for an FVIO may be made by either police, an AFM, or a person who has the consent of an adult AFM to apply on their behalf, or a person acting on behalf of a child AFM. *Family Violence Protection Act 2008* (Vic) s 45.
- 14 *Family Violence Protection Act 2008* (Vic) ss 24–26.
- 15 Ibid ss 24, 26. An FVSN is taken to be an application for an FVIO: *ibid* s 31.
- 16 See the *Family Violence Protection Amendment Bill 2014* (Vic) cl 5, which resulted in the current provisions in the *Family Violence Protection Act 2008* (Vic) s 5(b).
- 17 Victoria Police, above n 1, 37.
- 18 Ibid.
- 19 Formerly known as civil advocates.
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- 21 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 119, provided to the Commission by the Crime Statistics Agency, 8 January 2016; County Court of Victoria, Submission 835, 2 [6].
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- 23 *Family Violence Protection Act 2008* (Vic) s 123; *Sentencing Act 1991* (Vic) s 112.
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- 26 Ibid.
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- 28 Transcript of Spriggs, 3 August 2015, 1601 [23]–[27].
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- 30 Ibid 27.
- 31 Statement of McWhirter, 27 July 2015, 8 [34].
- 32 Victoria Police (prepared by the Crime Statistics Agency), 'Proportion of Repeat Other Parties and Where a Referral Has Been Made But With No Civil or Criminal Action—July 2013 to June 2014; Family Incidents by Principal Offence Where Charges Have Been Laid by Police—July 2013 to June 2014', Tab 2, Table 2: 'Family incidents by principal offence where charges have been laid by police—July 2013 to June 2014', produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).
- 33 In the data provided, 'Breaches of orders' comprises 'Breach FV order' (n=6073); 'Breach intervention order' (n=39) and 'Breach bail conditions' (n=31): *ibid*.
- 34 Sentencing Advisory Council, 'Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report' (December 2015) 9–10.
- 35 Victoria Police, above n 1, 44.
- 36 Department of Health and Human Services, 'Family Violence Referral Protocol Between the Department of Health and Human Services and Victoria Police' (June 2015) 7.
- 37 Victoria Police, above n 1, 27.
- 38 Department of Health and Human Services, above n 36, 8–9.
- 39 The obligations of mandatory reporters are contained in *Children, Youth and Families Act 2005* (Vic) s 184.
- 40 That is, a reasonable belief that a child is in need of protection due to physical injury or sexual abuse. See Department of Health and Human Services, above n 36, 9.
- 41 Ibid 8–9.
- 42 Statement of Spriggs, 27 July 2015, 17 [72].
- 43 Domestic Violence Victoria—03, Submission 943, 6.
- 44 Anglicare Victoria, Submission 665, 11; Inner Melbourne Community Legal, Submission 506, 21–3 (notes Code is 'invaluable' while recommending its elevation to status of Victoria Police Manual); Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 7–8.
- 45 Grampians Integrated Family Violence Committee, Submission 399, 8; Anglicare Victoria, Submission 665, 11; Connections UnitingCare, Submission 398, 6.
- 46 Children's Protection Society, Submission 505, 12. See also Berry Street, Submission 834, 19.
- 47 Community consultation, Geelong 1, 28 April 2015.
- 48 Community consultation, Bendigo 1, 5 May 2015.
- 49 Community consultation, Melbourne, 30 April 2015.
- 50 Ibid.
- 51 Doncaster Community Care and Counselling Centre Inc—Doncare, Submission 742, 11.
- 52 Women's Legal Service Victoria—01, Submission 940, 55–59.
- 53 Cobaw Community Health, Submission 396, 4.
- 54 Transcript of Cornelius, 5 August 2015, 2045 [9]–[15].
- 55 Community consultation, Werribee 2, 11 May 2015; Community consultation, Shepparton 2, 18 May 2015; Community consultation, Bendigo 2, 5 May 2015.
- 56 Goulburn Valley Community Legal Centre, Submission 495, 3; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 61; Loddon Campaspe Community Legal Centre, Submission 236, 16.
- 57 Women's Legal Service Victoria—03, Submission 940, 11.

58 Community consultation, Bendigo 2, 5 May 2015; Community consultation, Melbourne 1, 24 April 2015; Community consultation, Shepparton 1, 18 May 2015.

59 Quantum Support Services Incorporated, Submission 371, 3.

60 Community consultation, Melbourne 1, 14 May 2015; Community consultation, Werribee 1, 11 May 2015.

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75 InTouch Multicultural Centre Against Family Violence, Submission 612, 45; Ethnic Communities' Council of Victoria, Submission 879, 5. The Victoria Police Code of Practice includes specific guidance on use of interpreters: see, eg, Victoria Police, above n 1, 8, 12, 25, 33.

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79 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 19.

80 Ibid.

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82 Victoria Police, Submission 923, 35–36.

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84 Victorian Equal Opportunity and Human Rights Commission, 'Beyond Doubt: The Experiences of People with Disabilities Reporting Crime—Summary Report' (July 2014) 24.

85 Victoria Police, above n 1, 12.

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89 NorthWestern Mental Health, Submission 993, 2.

90 Victoria Police, Submission 923, 20.

91 Primary Care Connect, Submission 145, 6.

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# 15 Police: leadership, resourcing and organisational systems

## Introduction

Chapter 14 examines Victoria Police's front-line response to family violence, including workforce development through education, training and supervision. This chapter takes a broader view, looking at leadership, resourcing and organisational systems.

The first section of this chapter provides an overview of Victoria Police's strategic vision, regional structure and organisational design. It looks at the strong leadership Victoria Police has shown and the performance measures used to determine resource allocation. It also discusses the question of demand, which is relevant to both this chapter and the preceding one. Demand is determined by a variety of factors, among them the fact that recidivist offenders account for a large proportion of family violence incidents.

The second section of the chapter explores the challenges and opportunities that were commonly raised in evidence in relation to Victoria Police's organisational structures and processes. Escalating demand is placing a significant strain on general duties police, and this has flow-on effects for how Victoria Police resources its family violence response. Criminal investigation of family violence is also considered. Although there is now more focus on investigations, the Commission received evidence that this task tends to be left to general duties police and might not be receiving priority in resourcing decisions.

This chapter also examines the question of family violence specialisation in Victoria Police's organisational structure. The Commission heard that specialists can offer advantages in terms of supporting front-line police and responding effectively to family violence, and it therefore considers the need for a specialist career path in Victoria Police. On this point, the Commission notes that a balance needs to be struck between increasing specialisation and ensuring that general police members see family violence as part of their 'core business'. The resourcing and functioning of specialist family violence teams is also considered.

The final part of this section looks at systems issues related to the capacity of police to respond to family violence, such as whether allowing police to issue family violence intervention orders in the field might improve victims' safety and justice outcomes. Proposals to change the requirements for police to personally serve orders are discussed, as is the use of body-worn cameras to record evidence at the scene of a family violence incident and whether information technology could be improved to reduce the administrative burden on police.

In the final section of the chapter, after reviewing current practice and concerns raised by a number of stakeholders, the Commission presents its opinions and proposes a way forward. One of the recommendations that the Commission makes is that Victoria Police Family Violence Command should revise the Violence Against Women and Children Strategy to clarify Victoria Police's vision, strategic objectives, key actions and roles and responsibilities in combatting family violence. The Commission also proposes that Victoria Police develop a stronger focus on recidivism and high-risk offenders, and increase its organisational capacity and responsibility for criminal investigations.

Family violence specialisation and the role and resourcing of family violence teams need to be strengthened. Given the differences in how these teams currently operate, the Commission proposes setting a baseline model for family violence teams, with each region being able to allocate resources over and above the baseline model. The Commission suggests that, in time, a more centralised model for the resourcing of specialist roles and family violence teams is developed.

The evidence and recommendations in this chapter should be read alongside those in the preceding chapter.

## Context

The 'Context and current practice' section in Chapter 14, also provides background information relevant to the organisational matters examined in more detail in the present chapter. This chapter explores how the police response to family violence is reflected in Victoria Police's strategic vision and regional structure, as well as its organisational design.

## Strategic vision

Victoria Police's operational and strategic vision is guided by several high-level policy documents.

The *Victoria Police Blue Paper: A Vision for Victoria Police in 2025* sets out Victoria Police's long-term strategy and operating model, which responds to internal trends as well as projected changes in policing demands, as a result of broader social, economic and environmental trends, including in relation to family violence.<sup>1</sup> The Blue Paper is complemented by the Victoria Police Corporate Plan 2015–18—Year 1, which also assigns priority to family violence as a performance focus and proposes specific actions and projects.<sup>2</sup>

Victoria Police has articulated its current vision and strategy in relation to family violence in *Living Free from Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014*.<sup>3</sup> Table 15.1 shows the objectives and performance measures set out in the strategy.

Table 15.1 The Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014: objectives and measures

Objective	Measures over the next five years
Respond to and investigate family violence, sexual assault and child abuse more effectively.	Increase family violence reports to Victoria Police by 10% and charges laid by 5%. Increase sexual assault reports to Victoria Police by 15%. Increase family violence intervention order applications by 10%.
Take a leadership role in driving integrated service delivery.	Increase referrals from police to family violence services by 15%.
Reduce the risk to children and young people of ongoing exposure to violence through prevention and early intervention.	Increase reports for child physical assault (family related) by 10%.
Increase members' understanding of violence against women and children in order to provide appropriate policing responses.	Demonstrated increase in members' understanding of violence against women and children.

Source: Victoria Police, *Living Free from Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014* (November 2009) v.

In addition, the 2015 publication *Future Directions for Victim-centric Policing* outlines Victoria Police's commitment to, among other things, embedding victim-centric processes in the organisation, enhancing service delivery for victims and those in need of assistance and developing support and intervention referral pathways in partnership with family violence service providers.<sup>4</sup>

## Regional structure

Victoria Police consists of the Office of the Chief Commissioner and five executive portfolios—Regional Operations, Specialist Operations, Capability, Business Services and Infrastructure—each headed by either a deputy commissioner (police member) or an executive director (public servant).<sup>5</sup>

Each executive portfolio comprises between three and seven commands or departments, each managed by either an assistant commissioner (police member) or a director (public servant). These cover a range of operational and non-operational areas, such as Road Policing Command, Crime Command, the Human Resource Department and the Operational Infrastructure Department.<sup>6</sup> The Family Violence Command was established in 2015.<sup>7</sup>

Victoria Police delivers its front-line policing services through four regional commands. Two regions cover metropolitan areas (North West Metro and Southern Metro) and two regions cover both regional and metropolitan areas (Western Region and Eastern Region). Each region is managed by an assistant commissioner.<sup>8</sup> Throughout the regions there are 21 divisions, which contain a total of 54 police service areas.<sup>9</sup> Each division is made up of several police service areas and is managed by a superintendent. Each police service is managed by an inspector and contains a number of police stations, some of which are open 24 hours a day. Police stations are managed by a senior sergeant.

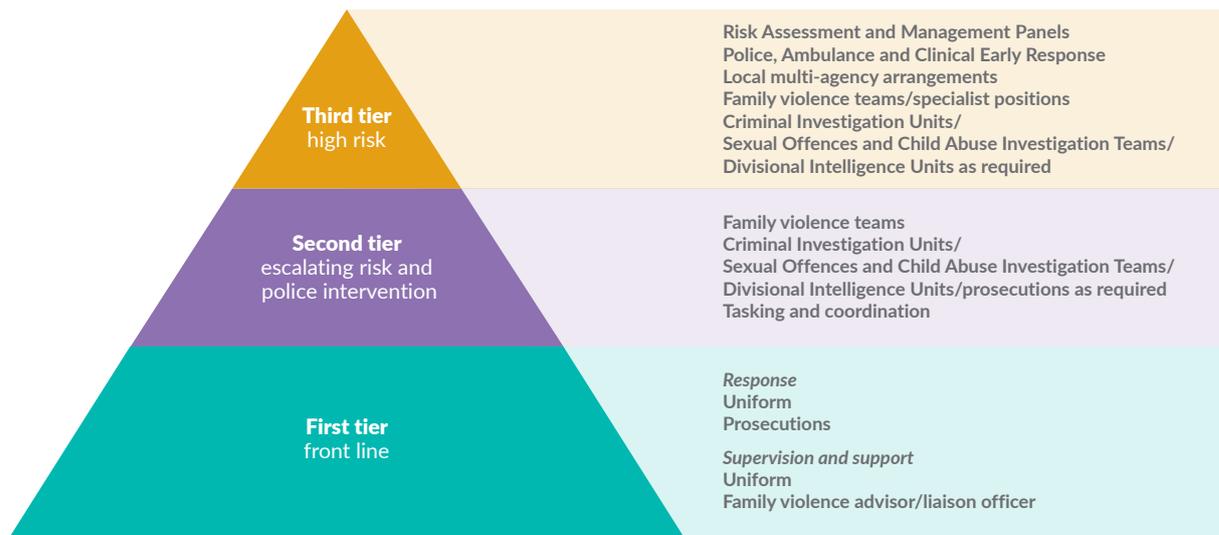
## Organisational design

Victoria Police's policy and operational settings for responding to family violence and delivering on its strategy and its corporate mission confer functions on generalist and specialist work units, and individual members.

The Enhanced Family Violence Service Delivery Model (EFVSDM) launched in 2011, outlines a three-tiered response to family violence. Under this model, the intensity of the police response increases with risk and seriousness (and the number of cases decreases). The second and third tiers focus on recidivism and risk, which is discussed Chapter 6.<sup>10</sup>

Figure 15.1 depicts this model of the main Victoria Police work units and positions involved in each tier throughout the service's regional structure.<sup>11</sup>

Figure 15.1 The Victoria Police Enhanced Family Violence Service Delivery Model



The following are among the notable features of Victoria Police's organisational design:

- ▷ The allocation of resources to specialist family violence teams and roles is controlled at the regional and local levels, rather than centrally.
- ▷ General duties police shoulder most of the responsibility for responding to family violence incidents.
- ▷ Few specialist family violence roles are gazetted (permanent) positions.
- ▷ The functions, resources and operating models of family violence teams vary considerably.
- ▷ Station-level management and supervision have a major impact on the local-level response to family violence.

Within this framework, a number of Victoria Police positions and work units have responsibility for delivering police services in response to family violence:

Table 15.2 Victoria Police positions and work units with responsibility for family violence-related services

Position/unit	Roles and responsibilities
Executive Command	▷ Overall responsibility for Victoria Police's strategic direction and performance. <sup>12</sup>
Family Violence Command	▷ Monitoring Victoria Police's organisational response to family violence, maintaining organisational accountability and improving police responses to family violence, sexual assault and child abuse. <sup>13</sup>
Regional/ Divisional/ Police Service Area Command Management	<ul style="list-style-type: none"> <li>▷ Regional assistant commissioners are responsible for policing services in their region and determine resourcing levels and operating models for family violence teams.</li> <li>▷ Victoria Police monitors the response of regions through the release of monthly scorecards, which inform the allocation of resources and prioritisation of tasks.<sup>14</sup> Assistant commissioners and divisional superintendents conduct monthly tasking and coordination meetings to review performance, including against family violence targets.</li> <li>▷ Police service area command managers (inspectors) oversee compliance with the Code of Practice for the Investigation of Family Violence in their police service area, ensuring that stations are meeting or exceeding performance measures.</li> </ul>

Table 15.3 shows the police positions and work units that have primary responsibility for delivering or supervising operational policing services relating to family violence.

Table 15.3 Victoria Police positions and work units with responsibility for delivering or supervising family violence-related operational policing services

Position/unit	Roles and responsibilities
General duties police	<ul style="list-style-type: none"> <li>▷ General duties police members provide primary response and general patrol duties, including front-line responses to family violence incidents 24 hours a day, seven days a week, across the entire state.</li> <li>▷ Their actions are guided by the Code of Practice and the Victoria Police Manual.<sup>15</sup></li> <li>▷ This includes conducting a risk assessment and adopting one or more of the risk management options in the Code of Practice (criminal, civil and referral options).</li> </ul>
Supervisors	▷ Officers ranked leading senior constable or below are supervised by a Sergeant (or above) whose role is to ensure that family violence matters are handled appropriately, and that victims are updated on progress of cases concerning them. <sup>16</sup>
Station officers in charge	▷ Station OICs (senior sergeant rank) have family violence accountabilities that include ensuring people in leadership roles are available and have adequate non-operational time to perform their duties and that all station members are complying with the Code of Practice. <sup>17</sup>
Investigation and response units Criminal Investigation Unit Sexual Offences and Child Abuse Investigation Teams (SOCITs)	<ul style="list-style-type: none"> <li>▷ Investigation of serious family violence-related criminal offences.</li> <li>▷ Victoria Police crime screening principles require an investigation and response unit to investigate all crimes against the person and all matters in accordance with the Code of Practice except:<sup>18</sup> <ul style="list-style-type: none"> <li>▷ minor assaults, where the offender is identified but not present and the investigation is of a non-complex nature and does not require significant follow-up</li> <li>▷ when front-line police are able to arrest and process the offender within the shift or where there is no significant follow-up.<sup>19</sup></li> </ul> </li> <li>▷ The Code of Practice states that an investigation and response unit must take responsibility for, or actively oversee, investigations involving:<sup>20</sup> <ul style="list-style-type: none"> <li>▷ stalking</li> <li>▷ threats to inflict serious injury or death</li> <li>▷ sex offences</li> <li>▷ assault involving injury (including strangulation or attempted strangulation) or involving a weapon</li> <li>▷ significant property damage</li> <li>▷ historical offences not previously reported.</li> </ul> </li> <li>▷ SOCITs are specialised response and investigative teams for sexual assault and/or child abuse matters. The Code of Practice states that, depending on the circumstances, attending police may request SOCITs to be involved.<sup>21</sup></li> </ul>

Position/unit	Roles and responsibilities
Family violence advisors	<ul style="list-style-type: none"> <li>▷ Family violence advisors (sergeants) provide the interface between operational units, family violence liaison officers and local agencies.</li> <li>▷ They train operational units in family violence responses and provide information on new initiatives, policies and frameworks.</li> <li>▷ They identify local issues, trends and incidents of family violence and developing strategies to break the cycle of family violence.<sup>22</sup></li> </ul>
Family violence liaison officers	<ul style="list-style-type: none"> <li>▷ Family violence liaison officers (sergeants) are located at every 24-hour police station in Victoria.</li> <li>▷ They ensure that their station or cluster provides a consistent and coordinated approach to family violence.</li> <li>▷ They monitor and report on family violence, including members' adherence to the Code of Practice.<sup>23</sup></li> </ul>
Family violence teams	<ul style="list-style-type: none"> <li>▷ Family violence teams are drawn from the general duties uniform roster.</li> <li>▷ They provide an immediate specialist response to family violence incidents.</li> <li>▷ Their functions vary greatly and can include proactive investigations and case management of recidivist offenders and high-risk clients and work with external agencies.<sup>24</sup></li> </ul>
Divisional intelligence units	<ul style="list-style-type: none"> <li>▷ Divisional intelligence units generate family violence recidivist lists and other intelligence products such as incident and trend analyses, target profiles, threat assessments and intelligence assessments.</li> <li>▷ They coordinate tasking and coordination processes to ensure that resources are deployed effectively and efficiently for maximum impact on the highest priority family violence recidivists.<sup>25</sup></li> </ul>
Divisional tasking and coordination committees	<ul style="list-style-type: none"> <li>▷ Divisional tasking and coordination committees decide on the basis of the available information and intelligence which family violence recidivists have highest priority.<sup>26</sup></li> </ul>

## Leadership and resourcing

Strong leadership at the highest levels of Victoria Police has been a hallmark of family violence reform and improved practice in the past decade. The Commission also heard directly from a number of police members in specialist family violence roles who are providing leadership at the operational level.<sup>27</sup>

The Commission notes the evidence of Victoria Police representatives to the New South Wales Legislative Council Standing Committee on Social Issues in relation to the effect of senior leadership within the service:

Our Chief Commissioner, going back to when we had Christine Nixon as our Chief Commissioner, right through to our current Chief Commissioner, Ken Lay, have made it clear it is a mandate to keep this as one of the targeted areas ... over the next five years. I think that has been heard clearly throughout the organisation. I think it has dramatically changed management's views of the importance of it in responding appropriately and having an impact in the Community.<sup>28</sup>

The establishment of Family Violence Command within Victoria Police in early 2015 was designed to create a single authoritative voice communicating a clear family violence vision, strategy and operating model for Victoria Police.<sup>29</sup> It was said that Family Violence Command does not have line management control over family violence teams or other police resources dedicated to family violence, since these decisions rest with the regions. As Assistant Commissioner Dean McWhirter of Family Violence Command said:

... So Family Violence Command is set up as a central command to provide the organisation with policy guidance and direction in relation to family violence as such. All the responsibility for front-line service, family violence teams, all the actual positions that actually support family violence, sit within the four regional areas. My responsibility will be to actually identify good practice and then work with the Assistant Commissioners to actually [deliver] that good practice in the regions in terms of the response.<sup>30</sup>

Assistant Commissioner McWhirter also told the Commission about the monitoring mechanisms used to assess regions' performance in relation to family violence:

Victoria Police monitors the response of regions through the release of monthly scorecards, which analyse how each region is trending against a set of performance measures for a range of themes, including family violence.<sup>31</sup>

Regions are measured against performance measures that have been established in the *Living Free From Violence 2009–2014—Violence Against Women and Children Strategy*. Many of the measures are focused on increased reporting rates for family violence and sexual assault.<sup>32</sup>

Assistant Commissioners McWhirter and Luke Cornelius explained how scorecards are used to drive resource allocation and measure performance against:

The scorecard process informs Tasking and Coordination processes across Victoria, which is the allocation of resources and prioritisation of tasks at a range of levels across the organisation.<sup>33</sup>

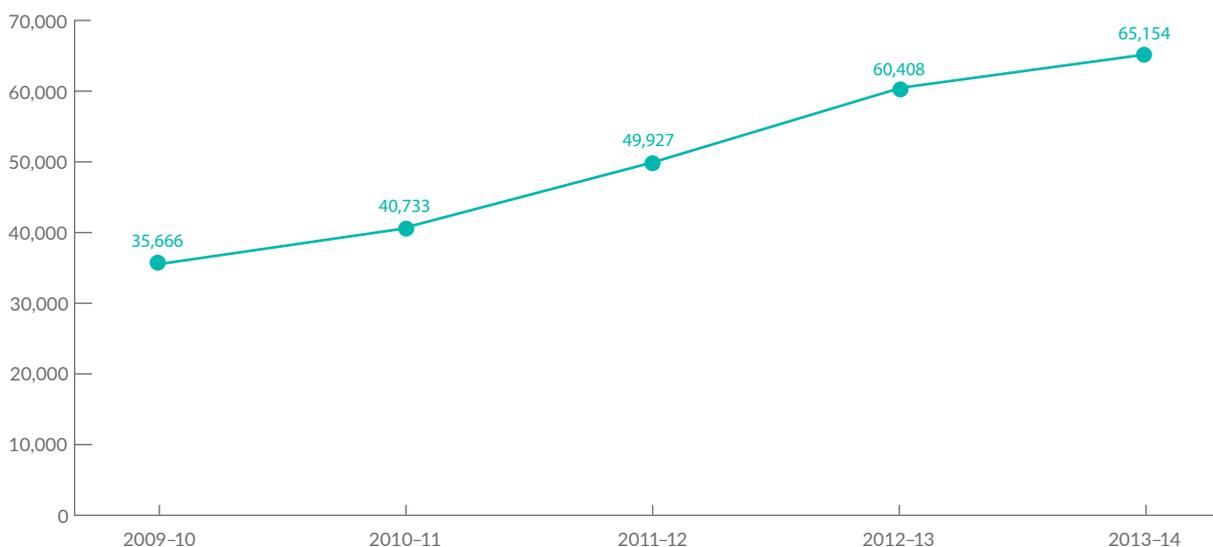
... every region conducts a monthly regional tasking and coordination meeting and we review ... the family violence scorecard, to challenge ourselves around making sure that we – you will see we are by and large exceeding the targets – but it really is around holding ourselves accountable against this scorecard.<sup>34</sup>

## Current demand

The question of demand cuts across all aspects of the police response to family violence.

Police data analysed for the Commission by the Crime Statistics Agency provides a measure of the growing demand for policing services generated by family violence. As a starting point, Figure 15.2 shows that the number of family violence incidents resulting in the completion of an L17 by police increased by 83 per cent in the five years to 30 June 2014.<sup>35</sup> A further increase was seen in 2014–15, when there were 70,906 family incidents recorded by police.<sup>36</sup>

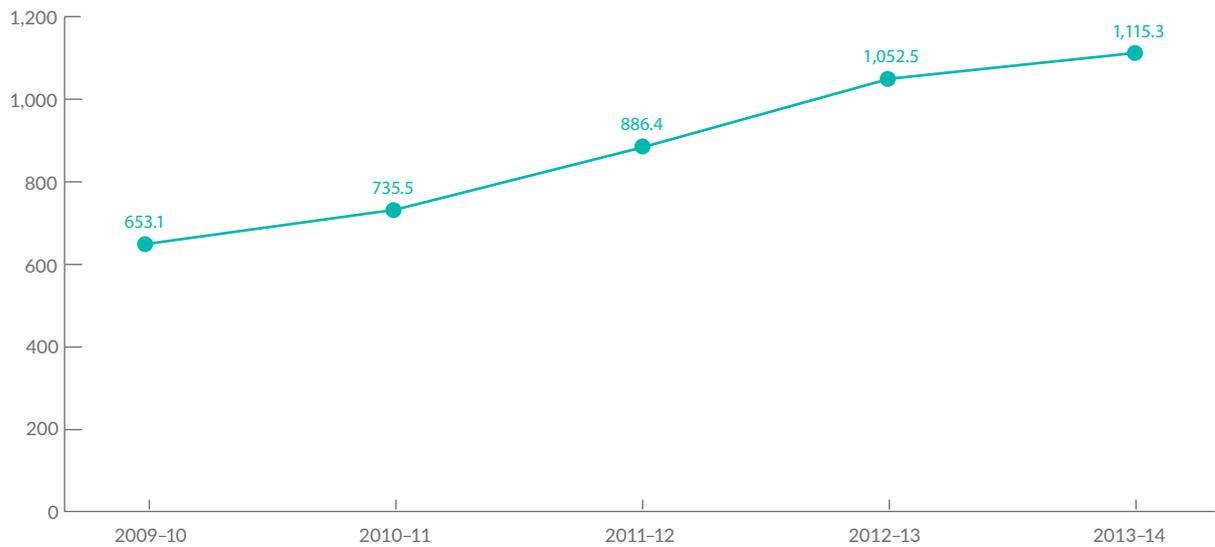
Figure 15.2 Family violence incidents recorded on an L17 form by Victoria Police, 2009–10 to 2013–14



Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Victoria Police data source, Tab 1, Table 1: Family violence incidents recorded and family incident rate per 100,000 population, July 2009 to July 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Furthermore, family violence incident reports are increasing: Figure 15.3 shows that the rate of family violence incident reports per 100,000 people increased by 71 per cent over the five years to 30 June 2014; a further increase was seen in 2014–15, when there were 1191.5 family violence incidents per 100,000 people.<sup>37</sup>

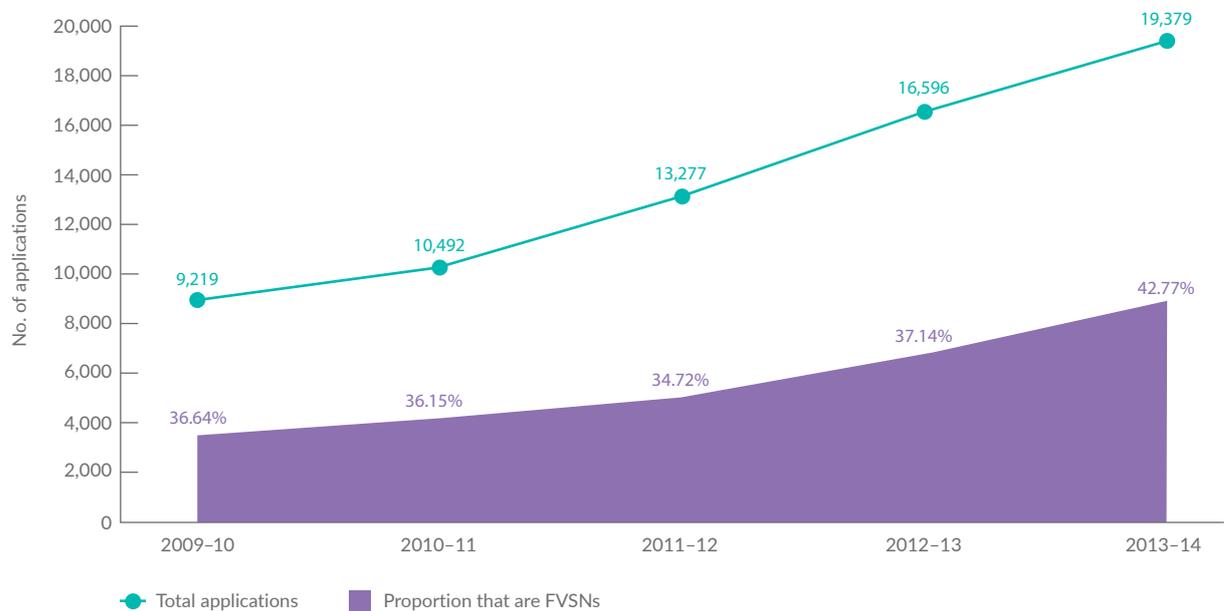
Figure 15.3 Family violence incidents per 100,000 people, as recorded on an L17 form by Victoria Police, 2009–10 to 2013–14



Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Victoria Police data source, Tab 1, Table 1: Family violence incidents recorded and family incident rate per 100,000 population, July 2009 to July 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

In addition to the volume of reports, Crime Statistics Agency data provides some insight into the changing nature of the police response. Figure 15.4 below shows that the number of police applications for family violence intervention orders and safety notices has increased by 110 per cent in the five years to 30 June 2014. It shows a gradual increase in the proportion of police applications initiated by the issuing of a family violence safety notice, rather than an application and summons or application and warrant.

Figure 15.4 Police applications for family violence intervention orders and safety notices, 2009–10 to 2013–14

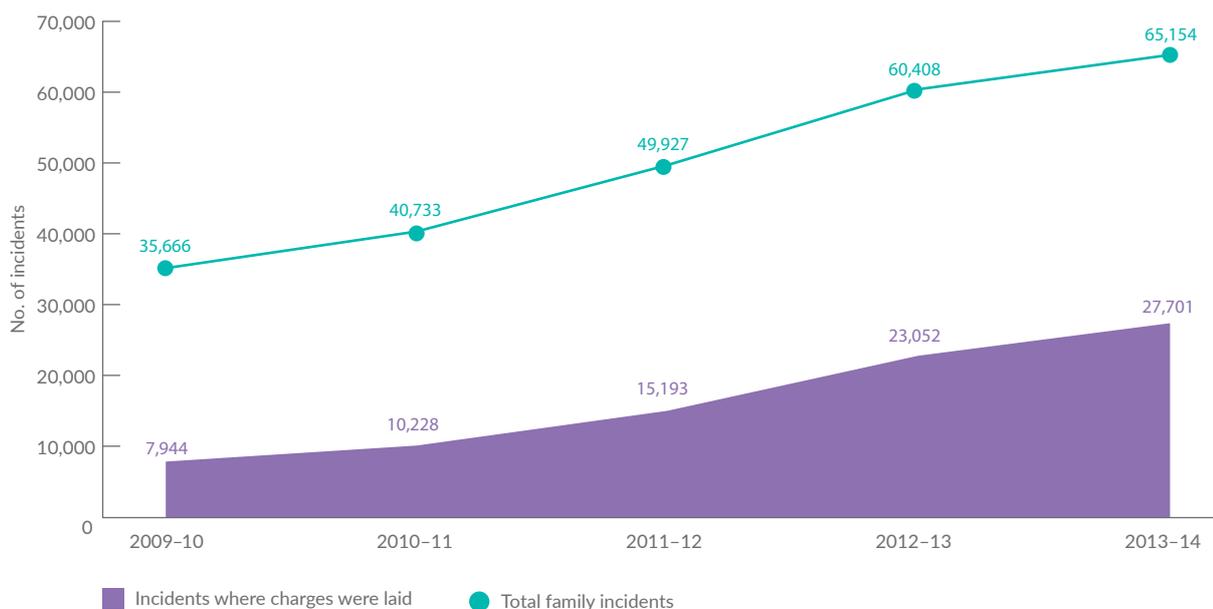


Note: The police may make a single application for a family violence intervention order in relation to multiple family violence incidents and attendances. The police may also attend family violence incidents where there is already family violence safety notice or intervention order in place and hence no application is required. This may explain why the number of police applications for family violence intervention orders is lower than the number of family violence incidents.

Source: Based on Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Victoria Police data, Table 19: Family Violence Intervention Orders and Safety Notices sought by Victoria Police, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Similarly, Figure 15.5 shows that the number of family violence incidents resulting in criminal charges increased by 249 per cent in the five years to 30 June 2014.

Figure 15.5 Family violence incidents where charges were laid, 2009–10 to 2013–14



Note: The police may lay charges for either or both a contravention of a family violence safety notice or intervention order and other offences arising out of a family violence incident.

Source: Based on Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009-10 to 2013-14* (January 2016), Victoria Police data, Tab 20: Table 20: Family incidents where charges were laid, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Assistant Commissioner McWhirter told the Commission family violence offences account for a significant and increasing proportion of all crime against the person:

Since 2004/05, the rate of family incident-related crime against the person per 100,000 people in the Victorian population has increased by 211%, while the rate of such crime from non-family incidents has decreased by 6.8%. Offences arising from family incidents accounted for over a third (41.7%) of all crime against the person offences in 2013/14.<sup>38</sup>

Other evidence provided to the Commission suggests that it is difficult to precisely quantify the amount and proportion of police time spent on responding to family violence. One difficulty is the fact that a range of police units might respond to a family violence incident, depending on the nature of the incident:

Family violence incidents can take a wide variety of forms and can require different responses from a wide range of specialist units within Victoria Police. As an example, in the 2014 calendar year the Dog Squad was called to assist in over 450 family violence related incidents ...<sup>39</sup>

In 2013/14, 41.7% of all kidnap/abduction offences arose from family violence incidents (263 of 630 kidnap/abduction incidents). These incidents often require a heightened response from specialist units involving large numbers of police personnel, including large-scale response from the Critical Incident Response Team or the Special Operations Group.<sup>40</sup>

Assistant Commissioner Cornelius stated that about 40 to 60 per cent of front-line police activities relate to family violence.<sup>41</sup> Victoria Police gave the Commission an estimate of expenditure relating to family violence in 2013-14 and 2014-15: it suggests that police expenditure attributable to family violence in 2014-15 was around \$779 million on the basis this amounted to 40 per cent of police activity.<sup>42</sup>

## Recidivism

The Commission engaged the Crime Statistics Agency to analyse the levels and predictors of recidivism among family violence perpetrators in Victoria, using Victoria Police data. 'Recidivism' was defined as the recording by police of more than one family violence incident involving the same perpetrator since police data was available for this. This does not, however, reflect the true incidence of repeat perpetration of family violence.

As discussed in Chapter 3, the Australian Bureau of Statistics' Personal Safety Survey data indicates that one in nine women in Australia (that is 961,500 women) have experienced multiple assaults by the same man since the age of 15.<sup>43</sup> Much of this violence is not reported to police. Indeed, the Code of Practice states:

Not all family violence matters are disclosed to police so that even an AFM [affected family member] who has not previously been reported to police may have been exposed to significant or repeated abuse, and police should factor this into the response.<sup>44</sup>

The Crime Statistics Agency analysis showed that a relatively small number of recidivist perpetrators account for a disproportionate number of family violence incidents attended by Victoria Police. As shown in Table 15.4, in the decade from 2004–05 to 2013–14 recidivists accounted for 69 per cent ( $n=279,230$ ) of 403,991 family violence incidents, despite comprising only 37 per cent ( $n=72,778$ ) of 197,822 perpetrators. Notably, nine per cent of perpetrators were responsible for 34 per cent of family violence incidents.<sup>45</sup> This group of recidivist perpetrators had five or more recorded family violence incidents.

Table 15.4 Incidents recorded for perpetrators, by number of incidents, 2004–05 to 2013–14

Number of incidents	Perpetrators		Incidents	
	<i>n</i>	%	<i>n</i>	%
1	125,044	63	125,044	31
2	32,889	17	65,778	16
3	14,797	7	44,391	11
4	8,178	4	32,712	8
5 or more	16,914	9	136,349	34

Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Table 42: Number and proportion of incidents recorded for perpetrators who committed 1, 2, 3 and 4 or more incidents between 2004–05 and 2013–14, 106, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

The Crime Statistics Agency analysis also showed that the proportion of perpetrators associated with more than one family violence incident in a year increased during this 10-year period, from 18 per cent ( $n=4,157$ ) in the year ending 30 June 2005 to 25 per cent ( $n=11,160$ ) in the year ending 30 June 2014.<sup>46</sup> The Commission notes, however, that improvements to the policing of family violence and increasing reporting rates may have affected this trend.

The Crime Statistics Agency also selected a cohort of perpetrators whose behaviour could be tracked over time in order to identify patterns and predictors of recidivism in greater detail. The cohort selected was perpetrators with one or more recorded family violence incidents in 2010–11.<sup>47</sup> The analysis found as follows:

- ▷ Just over half (51 per cent, or 15,611) of all alleged perpetrators recorded for at least one incident in 2010–11 (the 'index incident') were recorded for one or more further incidents by the end of March 2015.
- ▷ The median number of further incidents was two.
- ▷ Perpetrators with one to two previously recorded family violence incidents were 2.26 times more likely to be recorded for a recidivism incident than those with no previously recorded incidents (within the period of the study), and those with three or more prior-recorded incidents were 4.5 times more likely to be recorded for a recidivism incident.
- ▷ Perpetrators with a previously recorded contravention of a family violence order offence were more likely to be recorded for a recidivism incident.
- ▷ Perpetrators whose index event was against a current or former partner were more likely to be recorded for a recidivism incident than those whose index event was against another type of family member.
- ▷ If children were present at the index incident, there was a higher likelihood of a recidivism incident.
- ▷ Recidivist perpetrators were more likely to have the following risk factors recorded by police at the time of their index incident—unemployed; drug use possible/definite and/or victim alcohol use possible/definite; depressed/mental health issue, escalation of violence (increase in severity or frequency) or victim pregnancy or new birth.<sup>48</sup>

The last part of the Crime Statistics Agency study looked at the time elapsing between index incidents and recidivism incidents.<sup>49</sup> The CSA found that as the number of recidivism incidents increased, the time between the incidents decreased. The median number of days from an index incident to the first recidivism incident was 275. For those with three recidivism incidents, the median number of days between the first and third recidivism incident was 156 and, for those with four, the median number of days between their third and fourth recidivism incident was 109.<sup>50</sup>

Recidivism incidents occurred more rapidly after the index event for perpetrators who at the time of the index event:

- ▷ were male
- ▷ were in a younger age category
- ▷ perpetrated violence against a partner or former partner
- ▷ had a history of earlier recorded violence incidents—in particular, contraventions (breaches) of family violence intervention orders (the latter were ‘much more likely’ to have had a recidivism incident within six months of the index incident).<sup>51</sup>

At the six-month point, 40 per cent of those with three or more previously recorded family violence incidents had been recorded for a recidivism incident; this compares with only 14 per cent of those with no previous recorded incidents.<sup>52</sup>

### **The police response to recidivism**

Victoria Police defines recidivist perpetrators and ‘repeat victims’ in terms of three or more attendances at family violence incidents involving both parties or either party within a rolling 12-month period.<sup>53</sup> In broad terms, each police response option in the Code of Practice is directed towards preventing family violence recidivism and repeat victimisation. Specifically:

- ▷ One purpose of criminal sanctions is to deter individual offenders and the broader population from committing family violence crime in the future.
- ▷ Civil orders are designed to protect victims and their children from further family violence, thereby preventing recidivism.
- ▷ Formal referrals to specialist services aim to support victims and to link men to perpetrator programs in order to address and change their behaviour.<sup>54</sup>

Recognising the harm caused by recidivist perpetrators and the vulnerability of repeat victims, Victoria Police also has in place processes, procedures and initiatives for focusing specific effort on these cohorts. As a starting point, the Code of Practice states that recidivism strategies are required to ensure that interventions are effective and reduce the likelihood of violence recurring.<sup>55</sup> It also directs members to the Victoria Police Intelligence Doctrine for guidance on responses.<sup>56</sup> (The approach to recidivists is also summarised in the Standard Operating Procedures for Family Violence Teams.<sup>57</sup>)

The Victoria Police Intelligence Doctrine is confidential because of its operational sensitivity. The Commission can therefore only refer to it in broad terms. Divisional Intelligence Units have primary responsibility for identifying recidivist family violence perpetrators (family violence persons of interest, or POIs) and referring them to Tasking and Coordination meetings.<sup>58</sup>

The tasking and coordination process, which family violence liaison officers or family violence team officers in charge attend, assigns priority to family violence POIs and allocates management responsibilities for the highest priority matters to a specified workgroup.<sup>59</sup> A key function of most family violence teams is to manage family violence POIs and repeat victims.

Management plans for family violence POIs are tailored to particular circumstances. This can include passive or overt monitoring—for example, making contact with the individual to put them in touch with local agencies, case conferencing with other relevant services, and enforcement of any offences. Family violence POI ‘flags’ are created in the LEAP database, alerting police who come into contact with the person of their status; management plans are entered into the Interpose IT application.<sup>60</sup>

Participants in the Commission’s community consultations provided practical insights into how family violence teams manage recidivist perpetrators and repeat victims. For example, in Warrnambool the Commission was told that family violence team members contact the perpetrator and the victim, monitor the relationship and talk to agencies about any recent dealings;<sup>61</sup> in Geelong we heard that family violence team members work with repeat victims to reinforce safety plans, ensure referrals are put in place, and let them know that police take them seriously.<sup>62</sup>

In his report on the inquest into the death of Luke Batty, the former State Coroner, Judge Ian Gray, noted that Victoria Police had initiated some work to reduce repeat family offending, but that formal work was still required to ensure that the monitoring of repeat offenders and case management of repeat victims systematically occurred.<sup>63</sup> In his recommendations, Judge Gray noted that the evaluation of the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) should include an assessment of how accurately the framework can identify a perpetrator’s risk of repeat and/or escalating family violence.<sup>64</sup>

In addition, Judge Gray explicitly recommended that police ‘cease to use the current definition of “recidivist” family violence offender’ and instead develop a uniform definition of ‘high risk’, with consistent risk management strategies.<sup>65</sup> Building on these proposed developments, Judge Gray recommended that additional mechanisms include warning flags in LEAP; more intensive monitoring of the offender (including bail conditions), and a priority focus on the execution of all warrants.<sup>66</sup>

The Commission was informed that family violence teams have implemented a number of local, multi-agency initiatives that draw on the expertise of a range of relevant services to assist in the management of recidivist and high-risk family violence perpetrators.<sup>67</sup> (These initiatives are discussed in the next section, ‘Collaboration.’) Senior Sergeant Fiona Alexander, Officer in Charge, Integrated Response Team Initiative, of Taskforce Alexis, described the rationale and potential benefits of multi-agency approaches:

We offer a holistic approach. So we can’t change recidivism by ourselves. Vic Pol just – that’s just an impossibility. It needs to be an all-of-community problem and everybody needs to address it; so by having the holistic approach, having the key worker involved, having buy-in from all our support agencies so that they provide that smooth interface, and then having the enforcement conducted by police, where I think we are actually achieving some pretty big goals and making sure that everything that needs to be done is currently being done.<sup>68</sup>

In addition, the forthcoming local trial of triage and risk assessment tools (discussed in detail in Chapter 6), will test actuarial tools designed to identify perpetrators most likely to be repeat offenders within 12 months, allowing for their referral to the family violence team for management.<sup>69</sup> This trial will take place in North West Metropolitan Region North Division from June 2016.

The Commission also heard that recent initiatives by police and the courts are showing promising signs in terms of reducing recidivism. The following are two examples.

### **The Dandenong pro-arrest policy**

Since December 2013, Victoria Police in Dandenong have strictly adhered to the pro-arrest policy outlined in the Code of Practice. Assistant Commissioner Cornelius told the Commission that Dandenong is part of the police division with the highest rate of reported family violence in the state.<sup>70</sup> Twenty-one per cent of family violence offences were said to be perpetrated by recidivist offenders.<sup>71</sup>

Under the policy, suspected family violence perpetrators are arrested and remanded in custody for four hours.<sup>72</sup> Assistant Commissioner Cornelius explained:

It's the difference between a suspected offender sitting in the comfort of an interview room or that person spending time in a police cell alongside a drug dealer and a car thief. If we do this stuff to car thieves and drug dealers, we should absolutely be doing it to family violence offenders. They need to be in the same boat as any other common suspected criminal.<sup>73</sup>

Although the policy is aimed at all perpetrators, its effect can be most clearly measured in its impact on repeat offences. The Commission was told that the policy has led to a 'highly significant reduction in recidivism and repeat victimisation' in Dandenong.<sup>74</sup> It was piloted in Springvale in December 2013 and January 2014, and Victoria Police reported that in the month of January 2014 there were 64 family violence incidents,<sup>75</sup> which compares with 128 in January of the previous year.<sup>76</sup>

Assistant Commissioner Cornelius told the Commission the family violence recidivism rate in Dandenong is now much lower than the state average:<sup>77</sup>

The policy has also resulted in a highly significant reduction in recidivism and repeat victimisation in Dandenong. Prior to the commencement of the Pro-arrest Policy, locally sourced police data has indicated that repeat perpetrator rates in Southern Division 3 were increasing on a year to date rate as at January 2013 at 31% annually. Since commencement of the Policy, repeat perpetrator rates have shown a steady decline. This turnaround is in stark contrast to the State average and that of the whole of the SM [Southern Metropolitan] Region.<sup>78</sup>

The Commission was told the policy could build credibility and confidence in the police response, which might mean that perpetrators take the court and police responses more seriously.<sup>79</sup>

The Commission was also advised, however, of concerns about such policies in relation to similar police approaches overseas. The Police Association Victoria submitted:

At a practical level, the experience of [its] members reflects recent research that pro-arrest and pro-charge policies may have the unintended consequence of decreasing reporting for those victims who simply seek respite from the present violence rather than punishment for their partners.<sup>80</sup>

The Commission was told that mandatory arrest laws in the United States go further than pro-arrest policies and are designed to deprive police of their ability to exercise discretion when determining whether to make an arrest when responding to a family violence call (if there is 'probable cause' for an arrest to be made).<sup>81</sup> Professor Leigh Goodmark, Professor of Law at the Francis King Carey School of Law University of Maryland, gave evidence that under these mandatory arrest laws, it is not possible for family violence victims to say, 'I want the police to intervene at the intermediate moment to stop this violence, but I'm not interested in prosecuting, I'm not interested in being part of the criminal justice system'.<sup>82</sup>

Assistant Commissioner Cornelius confirmed that under the Dandenong pro-arrest policy, individual officers have discretion to exercise their powers to arrest or remand someone.<sup>83</sup>

Furthermore, the Commission was told that, in addition to reducing recidivism in the police division with the state's highest rate of reported family violence, adoption of the Dandenong pro-arrest policy:

... allows police to provide support to the victim, including to arrange alternative accommodation for the perpetrator or victim if necessary, and to investigate whether to lay charges. It also has a positive effect on the perpetrator. It takes control away from them and makes clear to them that their conduct is criminal.<sup>84</sup>

### **The Fast Track Project**

The Fast Track Project model began in December 2014 in Dandenong Magistrates' Court, and has since been expanded to venues including Ballarat, Ringwood, Broadmeadows and Shepparton.<sup>85</sup> It provides for criminal matters in the Magistrates' Court to be determined within a short period, by means of a practice direction issued by the Chief Magistrate and corresponding operating procedures of Victoria Police prosecutors.

Although the project has not been fully evaluated, magistrates, legal practitioners and others consider it has great potential to:<sup>86</sup>

- ▷ limit delays between the occurrence and final determination of a criminal offence
- ▷ increase the number of early guilty pleas
- ▷ increase the participation of victims of family violence
- ▷ limit the time during which victims of family violence must participate in legal proceedings
- ▷ impose swift and certain consequences on perpetrators of family violence
- ▷ limit the opportunity for perpetrators to re-offend before criminal proceedings are finalised.

This is discussed in more detail in Chapter 16.

### **Collaboration**

Family violence teams have also developed a range of multi-agency and collaborative models to manage recidivist offenders and repeat victims and to strengthen the management of very high-risk cases. These include the Risk Assessment and Management Panels, or RAMPs, discussed in Chapter 6. Other operating models include:

- ▷ *Taskforce Alexis*. A Salvation Army specialist family violence social worker is embedded full time in Division 2 of the Southern Metropolitan Region.<sup>87</sup>
- ▷ *Whittlesea Family Violence Police Outreach Partnership response*. A family violence outreach worker from Berry Street is embedded in the Whittlesea Family Violence Team (at Mill Park Police Station) two afternoons a week.<sup>88</sup>
- ▷ *The Repeat Police Attendance and High Risk Response Program*: Victoria Police family violence team members and domestic violence advocates from the Eastern Domestic Violence Service make weekly joint visits to repeat victims.<sup>89</sup>
- ▷ *A Case Manager at Geelong Police Station*. A Bethany Community Support Men's Case Manager is located at Geelong Police Station one day a week to engage immediately with men.<sup>90</sup>

## Taskforce Alexis

Taskforce Alexis is a pilot program based at Moorabbin Police Station; it provides immediate response and ongoing oversight and management of high-risk and recidivist family violence, mental health and youth offending cases.<sup>91</sup>

The task force consists of a family violence response team, a mental health response team and a youth/crime prevention/victimisation response team.<sup>92</sup> A Salvation Army key worker is embedded in the task force to address an identified gap in the provision of services to victims of family violence, in that many victims and perpetrators do not engage with support services through the normal L17 referral process.<sup>93</sup>

The key worker assists with triage and provides identified recidivist and high-risk families with assertive outreach, links to services and, as required, case coordination for complex situations.<sup>94</sup>

The Taskforce Alexis response team takes over incidents from first responders when the perpetrator is known as a recidivist or when the family violence incident is of a serious nature.<sup>95</sup> Wherever appropriate, the response team applies to remand perpetrators under the *Bail Act 1977* (Vic); 52 family violence perpetrators were remanded between 1 December 2014 and 5 August 2015.<sup>96</sup>

Taskforce Alexis manages about 50 to 60 families at any time, with at least one visit made each week to monitor victim safety and ensure that the respondent has not breached their intervention order or bail condition and that the victim is not inviting contact that would constitute a breach.<sup>97</sup>

The key worker's ongoing role in relation to recidivist incidents involves engaging with and acting as a conduit to services such as drug and alcohol or gambling counselling, mental health services and housing.<sup>98</sup> The key worker closes the file on a family either when there is no further offending or they have been handed over to a partner agency to manage.<sup>99</sup>

A Taskforce Coordination Team of government and non-government agency partners meets monthly to ensure that there is appropriate support for families who need coordinated case management; 24 families have been case-managed over four meetings since February 2015.<sup>100</sup>

To ensure that perpetrators are held to account, Taskforce Alexis creates a sense of urgency and accountability in relation to breaches of intervention orders by prompt attendance and prosecution of every breach where there is sufficient evidence.<sup>101</sup>

RMIT will begin an evaluation of Taskforce Alexis later this year, although early signs are that recidivism rates for people managed by the task force have declined: the 56 clients engaged by the key worker since December 2014 had an average of two L17s per person over eight months; compares with 5.3 L17s per person in the 12 months preceding Taskforce Alexis.<sup>102</sup>

## Northern High Risk Response Conference and Whittlesea Family Violence Police Outreach Partnership Response

The Northern High Risk Response Conference is a police-initiated and led multi-agency response designed to reduce risk and potential harm for victims at serious and imminent risk (regardless of age, sex or relationship), as identified by family violence teams in the north-west of Melbourne.<sup>103</sup>

The conference is made up of relevant service providers, including representatives of Child Protection, Child FIRST, Community Correctional Services, Northern Area Mental Health Services, Berry Street, Kildonan UnitingCare and Safe Steps.<sup>104</sup> It meets for a full day every fortnight to discuss the top 16 to 20 cases (807 cases had been assessed through the conference as at 27 July 2015).<sup>105</sup> Victoria Police stated that this process has resulted in new intervention orders being made or stricter conditions imposed, identification and pursuit of breaches, greater engagement with services, improved safety planning including security reviews, revocation of parole, more charges being laid, and more perpetrators being remanded in custody.<sup>106</sup>

The Whittlesea Family Violence Police Outreach Partnership involves a family violence outreach worker from Berry Street being embedded in the Whittlesea Family Violence Team two afternoons a week. The outreach worker assists with triage of family violence incidents and makes contact with women experiencing family violence to offer them a service (conducting joint home visits with a member of the family violence team when it is safe and appropriate to do so).<sup>107</sup>

## The Repeat Police Attendance and High Risk Response Program

The Repeat Police Attendance and High Risk Response Program began in March 2014, and involves Victoria Police and Eastern Domestic Violence Service working together to connect high-risk victims of family violence with services. The program operates out of Glen Waverley and Croydon Police Stations and involves joint Victoria Police and EDVOS visits to women affected by recidivist offenders. At these visits the family violence team members give the woman information about intervention orders and take statements concerning criminal offences. EDVOS assesses the woman's needs and provides information and referral to appropriate services. In addition, representatives of EDVOS and Victoria Police (Child Protection officers are also invited) meet monthly to report on the progress of clients and discuss any concerns.<sup>108</sup>

The program's success rate in engaging with women is significantly higher than the standard engagement strategy of phoning women to offer information and support: from March 2014 to February 2015 the Glen Waverley team made 174 home visits and 79 per cent of women engaged with EDVOS and participating in safety planning.<sup>109</sup>

The Commission received evidence from Victoria Police members about the benefits some of these local initiatives such as those discussed here:

So collectively it [the Northern High Risk Response Conference] strengthens our risk assessments, provides individual further risk assessment around the children and it also allows us to build our action plans as a team ... certainly there's actions that have come out of there that could not have happened any other way.<sup>110</sup>

Senior Sergeant Alexander gave evidence to the Commission about the benefits of Taskforce Alexis, including buy-in from local agencies, the value of the key worker role and enforcement by police.<sup>111</sup>

The Commission was also told that local multi-agency initiatives will continue to have a role after the statewide roll-out of the RAMPs, as discussed in Chapter 6. Assistant Commissioner Cornelius told the Commission:

... if you take a high-volume family violence location like, for example, Cranbourne, where in excess of 320 high-risk perpetrators are located and are actively managed, well, the RAMP that's proposed for division 3, which covers Greater Dandenong, Cardinia and Casey, will only get 70 of those. So you will see a significant quantum of residual high-risk matters that will have to be managed outside of the RAMP process.<sup>112</sup>

So we are certainly seeing in many divisions across the state a piece of thinking which is not just about tooling up to support our part in the RAMPs, but also it's about thinking through what local arrangements and relationships do we have to build to allow us to manage residual risk ...<sup>113</sup>

Victoria Police members also told the Commission they see the expansion of multi-disciplinary centres to include a family violence response as a promising operating model. MDCs bring together Victoria Police, Child Protection and sexual assault counselling services at one site to provide integrated support for adults and children who have experienced sexual assault:

We see that there is a huge opportunity in relation to family violence response to apply that multi-disciplinary centre response. So that would be expanding our current response to sexual assault and child abuse victims and our investigation and our relationship with those other departments that sit within those multi-disciplinary centres, and then place family violence teams and those services that support victims of family violence in that multi-disciplinary environment.

Why? Because it's about providing the victim an immediacy of response that deals with their needs in crisis ...<sup>114</sup>

Assistant Commissioner McWhirter said that MDCs could therefore form part of the service mix of family violence teams:

The multi-disciplinary centre approach is just one aspect of how you respond. You can't have a multi-disciplinary centre in every geographical area ... That's where the flexibility of a model would then come in terms of a systems perspective. We were talking about ... different models of embedding specialists into family violence teams.<sup>115</sup>

Expanding MDCs to cover family violence was supported by the Eastern Centre Against Sexual Assault.<sup>116</sup> Others suggested the independent co-location of police and family violence services, building on the Taskforce Alexis model.<sup>117</sup> Chapter 13 further discusses co-location models and embedded workers, and the Commission makes recommendations with a view to promoting greater collaboration.

## Challenges and opportunities

The Commission received evidence about a number of challenges and opportunities for Victoria Police's response to family violence, in areas such as the changing pattern of demands on police leadership and accountability, the importance of criminal investigation of family violence incidents, the role and resourcing of family violence specialists in Victoria Police, and maximising police capacity to respond to family violence.

### Demand

High and escalating workloads associated with family violence are placing significant strain on front-line police, which could affect the sustainability of recent gains and the viability of further reforms. The Police Association Victoria stated:

... Victoria Police has in many ways been at the forefront of necessary change with respect to addressing violence against women for over a decade. However, such evolution inevitably places demand on police time. Coupled with the sharp increase in reports to police, and in the absence of commensurate increases in police numbers and organisational infrastructure, the continued introduction of reforms place a strain on frontline members and stretch resourcing to its limit.<sup>118</sup>

The Police Association Victoria argues that among the effects of this demand pressure are the need to triage calls; extended response times, which can lead to missed opportunities to issue family violence safety notices; decreasing morale, which can result in attrition; and insufficient time to attend to other matters.<sup>119</sup>

Victoria Police told the Commission that the requirement for police members to personally serve intervention orders and applications on respondents imposes significant demands on police time and resources.<sup>120</sup> Assistant Commissioner Cornelius gave evidence that:

Police informants drive the process for serving IVOs. In many cases, personal service is difficult, with informants having to make multiple attempts to locate a Respondent amongst all of their other general policing duties. Some Respondents are itinerant, and some Respondents deliberately evade police. These challenges result in a significant amount of time being expended on the task of serving IVOs ... which creates a risk for victims.<sup>121</sup>

Furthermore, Assistant Commissioner McWhirter noted that Victoria Police does not have a time attribution process for response and resourcing.

It's really difficult. We don't have a time attribution process within Victoria Police in terms of allocating time specifically to family violence or really to other forms of matters that we respond to. It is really difficult because ... of the complexities of family violence and the numbers of people who actually are involved in it from a policing perspective.<sup>122</sup>

The time spent dealing with a specific incident can also vary greatly. Sergeant Mark Spriggs, Family Violence Advisor for Division 5 of the North West Metro Region, told the Commission:

Obviously the time that members would spend at an incident can vary dramatically depending on the nature of the incident. If we are talking about a verbal only incident it may be a 15-minute discussion at the scene and it may turn into 20 minutes of filling out an L17 back at the station, obviously travel time to the incident, travel time to the station before they are available again to attend another incident, unless it was given priority over the reports. That's at the lower end of the scale.<sup>123</sup>

At the upper end of the scale where we are talking about criminal offending, if we have to gather evidence, if we have to obtain statements at the scene, it may go out to two hours or more. If we need to engage the services of interpreters that will slow it down even further. But we do have some incidents that will take a van crew off the road for the entire eight-hour shift and even longer, taking into account the actual scene and the processing and then application for remand if that's applicable.<sup>124</sup>

I did a time attribution study some time ago back when the L17 used to have on it an indication by the members how long they were tied up at the family violence incident, and that showed to be 2.2 hours per family violence incident on average; so taking into account the long ones and the short ones.<sup>125</sup>

That is at the scene and processing, but will not include brief preparation or court time.<sup>126</sup>

More broadly, the Commission heard anecdotal evidence from a range of sources suggesting that about half of general duties police members' time is spent responding to family violence. Assistant Commissioner Cornelius stated:

... my sense of it, based on various anecdotal exchanges with my members, is that 40 to 50, maybe as high as 60 per cent, is not a bad indication for the amount of time that members spend per shift dealing with family violence related matters and it's borne out by the crime offence data ... but that relates only to offence related matters, that doesn't include all of the other non-assault related offences that of course occur in the family violence space.<sup>127</sup>

The Police Association Victoria's submission contained feedback from its members that generally accords with Assistant Commissioner Cornelius's view:

Today we're so strict about compliance and so strict about enforcement with family violence provisions that that's consuming 60, 70 per cent of our time in terms of doing general crime, basically.<sup>128</sup>

Many in management calculated the time cost of responding to family violence incidents with respect to the task of determining rosters. From this perspective, the crime category of family violence was seen to account for the majority of first responder's time ...<sup>129</sup>

## **Police resources**

A variety of inquiry participants commented on the adequacy of police resources. The Police Association Victoria stated that an increase in police numbers is urgently required to meet current and future demand driven by family violence:

It is an unfortunate reality that many of the well intentioned and positive organisational reforms to the policing of family violence are yet to be met with commensurate resourcing. Chronic understaffing necessitates a process whereby members are compelled to triage responses. The limited human resources create delays in responding to family violence incidents, leading to missed opportunities to issue Family Violence Safety Notices. Further, the allocation of human resources must be based on demand.

A need-based resource allocation of police, with respect to police numbers and infrastructure, will ensure that victims are not subject to postcode justice. The Police Association of Victoria ... submits that the determination of frontline numbers should be based on a per capita minimum benchmark, based on current figures and projected population growth.<sup>130</sup>

Good Shepherd Australia New Zealand expressed support for more resources for response and follow-up:

The feedback from Good Shepherd staff that work directly with family violence victims is that there has been a significant improvement in the way Victoria Police members respond to family violence incidents. There is no doubt that the Victoria Police Code of Practice into the Investigation of Family Violence has re-instilled the community's trust and faith in the police. However, the strain on Victoria Police resources is becoming evident to those working at the coalface.<sup>131</sup>

... we advocate for a significant increase in the number of frontline members so as to guarantee a timely and adequate response *and* follow-up to family violence incidents.<sup>132</sup>

McAuley Community Services for Women argued that a lack of police resources can put women's safety at risk:

Victoria Police report that family violence work takes up an average of 50% of all police work across the state, and in some areas it is as high as 90%. Despite high levels of awareness, inconsistent response by Police and lack of resources means that women can not rely on Police to remain safe. For example, it can take up to 3 weeks for Intervention Orders (IVOs) to be served – a time at which risk of violence is greatest.<sup>133</sup>

Domestic Violence Victoria also linked a lack of police resources with the ability to keep women safe:

The most important element, without which women are not able to exercise their right to remain safely at home, is guaranteed legal and police protection, particularly in relation to the power to exclude perpetrators from the home, and this again, is an issue of adequate police resources.<sup>134</sup>

Melbourne City Mission submitted that the adequacy of policing resource levels can vary according to location:

Staff also note that even where culture and expertise are outstanding, this can be compromised by insufficient resources to respond (for example, to police call-outs).

[Some] women who try to report DV are at a disadvantage to do so purely by where they live.<sup>135</sup>

Gippsland Integrated Family Violence Service Reform Steering Committee, Colac Area Health, the Centre for Rural Regional Law and Justice, and a family violence worker in Warrnambool raised particular concerns about the adequacy and consistency of resourcing for specialist family violence roles in Victoria Police.<sup>136</sup>

A number of other individuals, organisations and members of parliament also made submissions calling for police to be adequately resourced to meet demand.<sup>137</sup> A key stakeholder at one of the Commission's community consultations succinctly summed up the situation: 'Police are under-resourced and what is expected of them now is huge'.<sup>138</sup>

Although Victoria Police did not specifically call for an increase in police numbers or resources in its submission, evidence from senior officers highlighted the effect of competing priorities on the ability to respond to family violence incidents.

## Leadership and accountability

In relation to this environment of high and increasing demand, the Commission received evidence on a range of leadership and accountability matters that are linked to inconsistent service levels. Responding to these concerns might offer a way of further improving the Victoria Police response to family violence.

Women's Health West Inc. submitted that there is a need for sustained leadership to effect cultural change throughout Victoria Police and deal with pockets of uneven practice:

... cultural change is a huge undertaking requiring long-term leadership, commitment and dedication; and that for an organisation as large as Victoria Police there are bound to be pockets of unevenness across the workforce with respect to understandings of, and responses to, family violence.<sup>139</sup>

In connection with this, Domestic Violence Victoria informed the Commission that translating strong senior leadership to changes on the front line is an ongoing challenge:

While the strong leadership of Victoria Police has achieved much, there is still more to do. The process of effecting such deep cultural change within an organisation as large as Victoria Police takes time. Promoting the reformist agenda into policing practice on the ground is a challenge ...<sup>140</sup>

The Commission also notes that passionate senior leadership, although crucial, is not of itself sufficient to embed practice change at the front line:

Cultural change is by nature a slow process and while the Victorian Police can be commended on its high-level leadership on the issue, changing the culture and practice at the general duties level of policing is a bigger challenge. An over-reliance on passionate leadership and an under-reliance on embedding change and skill development within the force runs the risk of undermining the good work that Victoria Police is doing in prioritising family violence.<sup>141</sup>

This accords with the New South Wales Legislative Council Standing Committee on Social Issues' recommendation that:

... the NSW Police Force should, as a priority, develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State. The leadership strategy should address how the NSW Police Force will harness the skills and commitment of police in leadership roles at all levels, from the Commissioner down to the Sergeant supervising general duties officers and the DVLO responsible for quality assurance of other officers' work. The aim should be to strengthen leadership at all levels, especially within the senior ranks of all local area commands. The strategy should also decide the accountability structures that will support the performance measurement approach within the Domestic Violence Justice Framework, and provide mechanisms to ensure that performance monitoring feeds into operational planning, policy development and systemic improvements.<sup>142</sup>

In addition to the importance of sustained leadership throughout the organisation, the Commission considered evidence highlighting the need for effective performance monitoring and reporting.

The Victorian Auditor-General stressed the importance of performance measurement in relation to leadership and accountability in his 2009 review of the implementation of the Code of Practice for the Investigation of Family Violence:

Police will be able to assess the effectiveness of their own procedures and policies if they establish comprehensive baseline data measures and performance monitoring over time. This will allow them to identify gaps in the service system requiring support from other agencies to reach designated targets and outcomes. Police must demonstrate the impact of policing strategies, particularly whether they can reduce the incidence and severity of family violence and protect victims. Potential measures include reductions in repeat offending, reductions in the frequency and severity of incidents and victim satisfaction with the police responses.<sup>143</sup>

Similarly, the Australian Institute of Criminology has noted that performance monitoring is required to answer a number of fundamental questions relating to the policing of family violence:

Members of the public may ask: *How well are police responding to family violence in my neighbourhood? How are they dealing with offenders? Is it worth reporting to police?* For policy makers, the question is: *What policies could be changed to assist and improve police performance in family violence, and how?* Finally, police need to know: *Are our family violence policing strategies effective in reducing victimisation and protecting victims? How do we know? Is our response to victims appropriate? How can we encourage victims to come forward and report?* To answer these questions, specific performance measures need to be identified and monitored.<sup>144</sup>

The Institute identified a range of possible performance measures—including the following:

- ▷ a reduction in repeat victimisation
- ▷ a reduction in repeat attendances
- ▷ a reduction in repeat offending
- ▷ accurate identification and recording of incidents
- ▷ an increased number of offenders charged and successfully prosecuted
- ▷ more arrests and charges for breach offences
- ▷ ensuring police are adequately informed about previous attendance and criminal histories before arriving at an incident
- ▷ improved willingness on the part of victims to call and/or cooperate with police and increased victim satisfaction with the police response.<sup>145</sup>

## Criminal investigations

As well as receiving evidence relating to inconsistent service levels, the Commission heard various views about Victoria Police's criminal investigations of family violence incidents. Senior police told the Commission the Code of Practice expresses a clear expectation that police members will collect evidence to support criminal prosecutions in appropriate cases:

It's my expectation that if we come upon a scene where clearly there's been some acts of violence and there's clear evidence of destruction, I would be wanting to see photographs being taken. If there's blood on the wall or somewhere, I would be wanting to see that being photographed. I would be wanting to see a record of a conversation with witnesses or indeed affected family members who are present around, 'Whose blood is this? How did it get there? What occurred?' so that we get that contemporary record from the people who are present at the scene as to what occurred ... That's an expectation. But, Commissioner, that does not occur in all situations.<sup>146</sup>

As noted the proportion of family violence incidents for which criminal charges are laid has grown substantially in the past five years. Charges were laid in 42.5 per cent of incidents (approximately 65,154) in 2013–14, compared with 22.3 per cent (approximately 35,666) of incidents in 2009–10.<sup>147</sup>

The Commission also heard about innovative approaches to investigating criminal offending associated with family violence. This includes embedding detectives in some family violence teams:

Detectives are not typically part of a family violence team. We have embedded detectives in all three of our teams ... The benefits of adding a detective to the team is that some investigations require the investigation to be handed over to the Criminal investigation Unit. What we find when we put the detectives into the team is that the members who are within the team with the guidance of the detective are able to retain more complex investigations and build their skills and knowledge with regard to investigating matters of that level.<sup>148</sup>

They also have superior skills in tracking and locating offenders via various tools that we use, and they can spread that knowledge through the members. We also use the family violence detectives in relation to our priority target management plans in relation to at-risk juveniles.<sup>149</sup>

This is in contrast with feedback relating to investigations conducted by general duties police: it was submitted that in many cases these do not meet the expectations set out in the Code of Practice:

[T]he difficulty is, ‘How do we move that idea of managing the scene?’ – which they do, separating the respondents, having the conversation with one and the other, but also in that process identifying that this is an opportunity to collect evidence, that this is an opportunity to – you know, it rarely happens that any photographs are taken of any injuries to the woman at the time of the incident, whether there’s damage to property, whether there’s evidence of, you know, the scene of the property where there’s furniture broken, there’s holes in the wall, everything else is not there.

If that case does not proceed to an assault, there is absolutely no evidence track about what had previously happened ...

So all that sort of thing is engrained or change a little bit of the culture to say, ‘Yes, it’s part of your work that you treat people with respect and listen to people and have empathy, but it’s also your remit to prepare the scene, to collect the evidence and to build a case for future prosecution, whether it’s going ahead this time or next time.’<sup>150</sup>

Material the Office of the Public Advocate provided to the Commission suggests that police need greater expertise in investigating crimes against older victims of family violence, including financial abuse crimes.<sup>151</sup> The material highlights the approach taken by the Seattle Police Department, where two detectives specialise in financial abuse of at-risk adults. Their investigative techniques include meeting victims, obtaining financial records, and freezing or seizing assets.<sup>152</sup> The Commission notes that Victoria Police has similar powers at its disposal under the *Confiscation Act 1997 (Vic)* and that its 2014 Blue Paper acknowledges the need to adapt to meet growth in the extent of crimes such as fraud.<sup>153</sup>

The Commission also examined a number of internal Victoria Police documents that identified areas for improvement in the investigation of family violence crime. For example:

- ▷ Some family violence advisors and family violence liaison officers interviewed as part of the review of the Code of Practice in 2013 pointed to a cultural distaste for criminal investigation units to assume responsibility for family violence matters.<sup>154</sup>
- ▷ An internal Victoria Police implementation review of the Enhanced Family Violence Service Delivery Model concluded that divisional information units provide little by way of intelligence support to family violence teams.<sup>155</sup>

The following are among other concerns noted in reviews:

- ▷ Non-family violence crimes are receiving resource priority by divisional investigations and response, and tasking and coordination managers, which is not reflective of organisational priorities.
- ▷ Family violence is listed as a priority for divisional managers and action plans, but this is not reflected in the allocation of resources or treatment at tasking and coordination committees.
- ▷ Autonomy in implementing the Enhanced Family Violence Service Delivery Model has allowed divisional management to minimally resource family violence, giving precedence to other community safety concerns such as volume crime and road trauma (for which divisional management is held to account).
- ▷ When it comes to family violence, there is a lack of Advancing Investigation Management compliance and a disjunction between family violence teams, general duties members and criminal investigation units, such that serious crimes and complex investigations are routinely assigned to junior members.
- ▷ Family violence liaison officers have oversight of the majority of family violence cases, with only about 13 per cent of incidents managed by family violence teams, yet most family violence liaison officer positions are portfolio positions, which means that family violence is just one aspect of their role. This situation is exacerbated by a lack of specialised training and rostering of family violence liaison officer shifts that do not reflect service demand.
- ▷ Family violence tasking and coordination is in reality performed at senior sergeant rank and below, and there is no avenue for obtaining additional resources through divisional tasking and coordination processes.
- ▷ Family violence is excluded from the investigation and response sphere, providing another example of a police culture that sees family violence as a general duties problem.<sup>156</sup>

Within Victoria Police, there was a range of views about how the organisation might improve its investigative response to family violence, in addition to the task force model and the embedding of detectives in family violence teams, as previously mentioned.

Assistant Commissioner Cornelius explained the broader implications and potential benefits of embedding more detectives in family violence teams:

... it is certainly the case that a number of family violence units have detectives seconded to them, and that certainly has significant benefits for us where we have the capacity to do it. But in high-demand areas, where, for example, we are facing very high demand across a whole range of crime outputs as well as family violence, we have actually found—and this is certainly the case in division 3, Dandenong and Casey particularly—that we actually get better capacity and capability to apply investigative skills by allocating those more complex investigations out of the family violence unit into the local [Criminal Investigative Unit].

Of course, they maintain a close connection with the family violence unit members ... [so that] appropriate handover occurs with the affected family members and also with the perpetrator so that you get that seamless handover from one area of service delivery in our front-line op space to the investigation space.

But, look, if I had my druthers, I would love to see detectives located with family violence units. But, as my colleague Assistant Commissioner McWhirter pointed out on Monday, this question about the shape and structure of family violence units is quite rightly up for review and reconsideration.<sup>157</sup>

He also raised the prospect of integrating family violence teams and sexual offences and child abuse investigation teams, or SOCITs:

But it's a moot point, for example, as to what ought the relationship between family violence units and SOCITs look like, given that in fact many family violence unit matters in fact are a SOCIT matter because they entail a sexual assault. So there's a question ... is it time for us to actually look at integrating those components.

If we do that, of course, there are significant capacity and cost implications for us. It, for example, costs us a lot more to pay detectives than it does members who are taken out of station. So members who come out of stations earn overtime. Members who are detectives receive both a detective's allowance and a commuted overtime allowance. These are all things that ultimately will ramp our costs. ... [And] there's a need for those [cost] implications to be funded.<sup>158</sup>

Detective Senior Sergeant Bryce Pettett, the Officer in Charge of the Dandenong SOCIT, gave evidence about the potential for adopting a model similar to the Embona model, which is used in the investigation of armed robberies:

... there is usually a qualified detective sergeant, a couple of detectives and then uniform personnel that are brought in to upskill the uniform members and to offer additional support. A model like that I think in the family violence space could work.

Currently a lot of the family violence units are just uniform police. I'm sure that their hearts are in the right place and they are trying to do the very best they possibly can, but we have a training system where people go through what's called the field investigators course, which is the preliminary course to the detective training school, and usually the Embona participants have at least done that, so they have qualified in the first aspect of detective training.

So if we had some senior guidance to junior and they work as teams on individual cases and they have very successful results. I think a model similar to that could be effective.<sup>159</sup>

In its submission, Victoria Police also explained the use of the 'whole story' approach and suggested extending it to family violence cases:

Under this approach, the emphasis would shift from the victim's actions and the tendency to make victims account for their reactions, to understanding how the offender made them react or behave in the way they did through fear and intimidation. In a family violence dynamic where a relationship is ongoing and abuse may have occurred and escalated over time, with manipulation, intimidation and threats a key characteristic, a more holistic view of the situation would be beneficial. In particular, there is often misunderstanding of why victims choose to remain in relationships, and this can become an undue focus that detracts from holding perpetrators accountable. The concept could be applied to family violence investigations and court matters in recognition of the similar style of relationship-based dynamics that occur and would allow greater understanding of offending patterns and shift the focus from victim justification, to perpetrator accountability.<sup>160</sup>

Superintendent Paul Naylor, Divisional Superintendent for North-West Victoria, also raised the importance of 'whole story' training for those investigating family violence incidents while noting the potential for 'upskilling' family violence team members in investigations to augment the status and attractiveness of those roles:

Our police are very much going from job to job and they don't always have the opportunity to get the whole story and there is some specific training around that for SOCIT investigators to try and tease out that a bit more, that can sometimes be the trigger for realising the real depth of the problem. I think our people need to get exposed to that.

At the moment our family violence unit in the Mallee has a turnover of people. We expose those that want to be exposed to it for around three months, it's a little bit plus or minus. There are other times where we have to task members into the family violence unit. Some enjoy the challenge. Others prefer the ongoing, you never know what's going to happen part of policing. So it's about making it a little bit more attractive than what it is now, and to hear the thought around the field investigators course is a really good stepping stone and it's a model similar to what the Major Collision Investigation Unit did around changing the mind set around fatal motorcar accidents where they have now had those investigators with a detective status.<sup>161</sup>

## Specialisation

Chapter 14 discusses general duties policing. This chapter considers specific roles that have developed in the past decade to support police attending family violence incidents. For ease of reference, these are referred to as 'specialist' roles, although police members do also attend family violence incidents and work directly with victims and perpetrators in operational roles.

Since 2004 Victoria Police has introduced a range of specialist family violence roles, and the range has expanded with time.<sup>162</sup> Victims and service providers gave evidence suggesting that specialist family violence positions—and, in particular, the family violence teams, are highly regarded.

Quantum Support Services Incorporated stated:

In Gippsland we have three of these specialised family violence police units, in Morwell, Sale and Bairnsdale and Quantum work with all three units to varying degrees. We have experienced significant improvement at all levels of policing in these units and have found members provide a consistent, informed and appropriate response. Further, we believe these specialised units demonstrate a clear commitment to address family violence at higher levels of policing by engaging with community at events and local forums and undertaking specialised family violence training (CRAF).

Quantum strongly supports the focus of the specialised family violence units on recidivist offenders and has found they are more responsive to issuing multiple charges, acting on order breaches and work to educate other members across the region from non-specialised family violence units. Further, this consistent approach from the specialised family violence units builds confidence in the women to report, knowing that police will respond appropriately.<sup>163</sup>

Gippsland Integrated Family Violence Service Reform Steering Committee observed:

It is generally agreed by workers that there can be an inconsistency with Police response when dealing with family violence. But in the areas where there is an established Police Family Violence Unit an informed, consistent and appropriate response is gained from Police.<sup>164</sup>

And Melbourne City Mission stated:

Melbourne City Mission particularly commends the location of specialist resources at different police stations and courts. Staff supporting clients with issues related to family violence provide many anecdotal examples of positive cultural transformation and best-practice responses to family violence within Victoria Police:

'Everyone treated her well. They were really lovely in their communication with her and ensured she understood the process. She was interviewed by the SOCIT team and they organised for an independent person to support her while she was interviewed. Prior to reporting, she'd been worried about how she would be treated. But they believed her, and they made all the right referrals for her and her daughter.'

'Another of our workers supported a mother with intellectual disability at Flemington police station to organise an IVO against an abusive partner. In this instance, the young mum was wanting to engage with a particular policewoman she had spoken to on a previous occasion. At the station the presenting officer was very helpful and went on to explain to the woman and reassure her that she had done the "Lighthouse training" and would be able to take her statement. When the woman declined, the officer was helpful with information which would enable the client to return and make a report.'<sup>165</sup>

Community consultations with service providers also suggested an association between family violence teams and an improved police response.<sup>166</sup>

One submission provided an anecdote to illustrate the difference a specialist response can make to a victim's experience and trajectory:

Police attitude is pinnacle when a person first presents at a police station. The first officer I disclosed to responded by saying 'what do you want me to do about it'. I walked away and didn't return to the station till some months later.

It was then I met an officer from [the Sexual Offences and Child Abuse Investigation Team] who was empathetic and willing to help me stand up to my perpetrator and have him charged. This process was excruciating but she was with me right to the very end. She was determined to see that I was able to take control of my journey and ensured I was communicated to frequently throughout the process. It is this type of commitment that is a strength of the Victorian police force but it should not be isolated flashes.<sup>167</sup>

Assistant Commissioner Cornelius explained the challenge of getting the balance right between a focus on family violence specialisation on one hand and maintaining flexibility on the other:

... our front-line response has to have the adaptive capacity and the agility to deal with whatever a van crew member finds on his plate when he starts a shift and heads off into a night full of surprises dealing with all of the demands that the community have on us. So wherever there is a proposal to increase or extend the specialisation of some of that adaptive capacity we of course going forward limit our flexibility as an organisation to move with the demands and the needs of the community.<sup>168</sup>

Finding this balance is central to Victoria Police responding effectively to family violence.

## Family violence teams

As noted, family violence teams are drawn from the general duties uniform roster, and provide an immediate specialist response to family violence incidents. Resourcing decisions in relation to family violence teams rest with regional management:

Certainly in relation to volume and demand, in terms of the capacity for them to actually provide resources into those family violence teams rests with the Assistant Commissioners and their relevant Superintendents.<sup>169</sup>

Information Victoria Police provided shows that there are 32 family violence teams in the state.<sup>170</sup> Victoria Police also shows that the equipment, facilities and other resources available to family violence teams can vary. While larger family violence teams mostly have access to dedicated vehicles, computers and office space, a number of the smaller teams do not have access to these dedicated resources.

The Police Association Victoria stated that family violence teams are hampered by inconsistent and at times insufficient staffing and resourcing levels:

[Family Violence Tasking Units] are not currently resourced adequately and often do not have access to computers or vehicles ...

The overwhelming majority of members supported the introduction and continued work of Family Violence Tasking Units. However, these units were consistently identified as severely under-resourced and limited in their capacity. It is evident that there is a way to go before Family Violence Tasking Units are able to reach their full potential.<sup>171</sup>

Information Victoria Police provided to the Commission also reveals variation between family violence teams in terms of the duration of assignments (see Table 15.5).<sup>172</sup>

Table 15.5 Family violence teams: assignment lengths

Rank	Duration of assignment
Sergeant	<ul style="list-style-type: none"> <li>▷ Only one family violence team officer in charge gazetted.</li> <li>▷ Where information disclosed, most sergeants assigned for 12 months.</li> </ul>
Other	<ul style="list-style-type: none"> <li>▷ Significant variation in length of assignment.</li> <li>▷ Usually six months or less, although up to 12 months in some teams.</li> <li>▷ One family violence team also offers an eight-week placement for police members at a designated training workplace police station. Designated training workplaces are those stations where recruits, as probationary constables, perform duties as part of their training.</li> </ul>

As noted, Victoria Police members also gave evidence about the optimal balance between gazetted and fixed-term rotational positions in family violence teams.<sup>173</sup>

## Functions

The functions of family violence teams vary throughout the state.<sup>174</sup> Table 15.6 provides a snapshot of the various functions and responsibilities.<sup>175</sup>

Table 15.6 Family violence teams: functions and responsibilities: a summary

Coverage	Functions and responsibilities
All teams	<ul style="list-style-type: none"> <li>▷ Manage recidivist and high-risk offenders.</li> </ul>
Most teams	<ul style="list-style-type: none"> <li>▷ Manage repeat and high-risk affected family members.</li> <li>▷ Manage juvenile affected family members.</li> <li>▷ Monitor and triage all divisional family violence incident reports.</li> <li>▷ Monitor and take over high-risk cases not fully dealt with by general duties.</li> </ul>
Many teams	<ul style="list-style-type: none"> <li>▷ First response—often conditional; for example, subject to availability, afternoon shift only, managed persons only, weekend and peak only.</li> </ul>
Some teams	<ul style="list-style-type: none"> <li>▷ Perform family violence court liaison officer functions.</li> <li>▷ Manage Divisional Intelligence Unit prison releases with family violence.</li> <li>▷ Arrest team and execute charge and warrants.</li> <li>▷ Provide back-up to first responders.</li> <li>▷ Liaise with relevant family violence liaison officers regarding outstanding files.</li> <li>▷ Take over family violence safety notice and charge and warrant processing from general duties.</li> <li>▷ Assist uniform when staffing is inadequate—watch house/custody/van.</li> </ul>

There are regional variations in how family violence teams understand and perform their role. In some cases, the teams will provide a first response to family violence incidents, whereas in other cases they are second responders, identifying high-risk or recidivist cases, and assisting non-specialist police teams in investigating them, and ensuring that perpetrators and victims are referred to and in contact with appropriate services.

Sergeant Spriggs described how family violence teams in his area combine their first and secondary responses. About half of their time is spent reviewing family violence incidents that have occurred in their division, identifying high-risk or recidivist matters and assisting first responders; the other half is spent on first responses to family violence incidents. Sergeant Spriggs explained:

Originally in my area we were just doing ... recidivist reduction, morning and afternoon shift. However, it became clear to me that there was a need to provide some relief to the general duties members in providing the [first] response to family violence. So the decision was made between myself and the superintendent of the day to split the response 50/50 so that we had that response capability to provide relief to the vans when they most needed it ... as well as providing ... for recidivist reduction.<sup>176</sup>

Assistant Commissioner Cornelius expressed some reservations about family violence teams as first responders:

... whenever we have dedicated specialist units to front-line response, we have lost them within an hour of the commencement of the shift and then we are back to front-line response providing that response. So that specialist front-line response exists in name only ...<sup>177</sup>

Assistant Commissioner Cornelius said the 'greatest value' of specialist units is 'to support and provide the engagement and the specialist skills ... to address the underlying behaviours and the ongoing needs of victims and perpetrators'.<sup>178</sup>

## Operating models

Family violence specialists in Victoria Police told the Commission family violence teams operating models vary:

There are different operating models ... Some are geared towards high risk. Some are geared all towards recidivist reduction. Not too many are providing primary response. Mine probably is unique in that we have split it down the middle and we have response crews available on every afternoon shift from every family violence team.<sup>179</sup>

An internal Victoria Police review of the implementation of the Enhanced Service Delivery Model found that the limited central guidance in relation to the expansion of family violence teams has resulted in a variety of approaches being adopted without evaluation and follow-up.<sup>180</sup>

Assistant Commissioner McWhirter noted that Family Violence Command would be developing a baseline model for family violence teams:

... the family violence teams were set up as a divisional response ... through the Enhanced ... Service delivery model which was developed in 2010–2011. However, one of my key responsibilities at Family Violence Command is ... to actually ... develop a baseline model for family violence teams in a principles-based approach and then negotiate back with the regional Assistant Commissioners as to how that would be applied in practice in their divisional responses.<sup>181</sup>

The Commission also heard, however, that differences can be a legitimate response to local needs:

Many of these models have differences ... informed by who the local players are, who the local agencies are, who the local service providers are, and I think it's quite right that we give our people the ability to leverage those local services and those local capabilities.<sup>182</sup>

Elsewhere, the Commission was informed that family violence teams use a range of mechanisms to triage family violence incidents and so identify matters requiring each team's attention. Ten family violence teams use the First 48 risk assessment tool, which was developed by a Victoria Police member, and has not been evaluated.<sup>183</sup> In another example, between January and July 2015 a senior clinical and forensic psychologist was embedded in the Maribyrnong Family Violence Team to make enhanced risk assessments using the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) tool developed in Canada.<sup>184</sup>

The Commission was also told that family violence teams can have different operational tactics and procedures. For example, it was said that the Family Violence Advisor in Divisions 5 and 6 of Southern Region of Victoria Police (Gippsland) has focused significant effort on educating police members in relation to the importance of prosecuting all intervention order breaches and associated offences against the person and property.<sup>185</sup>

It is thus evident that family violence teams have different emphases: some focus on high-risk matters, others on recidivist cases, and others on providing comprehensive first responses to family violence incidents. The distinction between high-risk and recidivist cases is crucial and is considered further in Chapter 6. There might be cases in which a pattern of recidivism has not developed, but there are risk factors that make the situation extremely dangerous for the victim; equally, there could be value in a firm and thorough response in the first instance to prevent recidivism or an escalation of risk.

## Limited tenure in family violence specialist roles

In community consultations and submissions, the Commission was advised that the rotation of members of family violence teams and the limited number of gazetted (permanent) family violence roles can see knowledge, expertise, relationships and trust with the service sector being built up and then lost.<sup>186</sup>

The Police Association Victoria stated:

The constant rotation of members within the FVTU [Family Violence Tasking Unit, or Team] has a number of clear implications for the development and retention of expertise. Those currently or formerly working within Family Violence Units related the following concerns:

- There is no 'best practice' model in relation to the scope and tasks of the FVTU. Members describe a process whereby nearby PSAs [Police Service Areas] with existing FVTUs are asked for advice as to how to establish and maintain new units. This has led to inconsistency in practice across the state.
- There is currently insufficient opportunity for training and professional development within FVTUs. As such, success, particularly initially, is often contingent on the member's level of knowledge and understanding of, and experience with, family violence.
- Further, 'the members are for the most part young and are often dealing with people who are older than them, whose relationships are older than they themselves are, and/or who often have greater life experience or at least a life experience that [is] totally alien to the member's own experience. Yet these members are expected to intervene and provide support, advice and guidance.'
- The FVLO [Family Violence Liaison Officer] role requires relationship building with the community and an establishment of trust. Constant rotations see new members starting at square one. FVTUs are not currently resourced adequately and often do not have access to computers or vehicles.
- FVTUs often operate one-up due to leave and frequency of staff rotations.<sup>187</sup>

Similarly, the Gippsland Integrated Family Violence Service Reform Steering Committee saw a need for longer tenure in family violence teams:

In two out of the three Police family violence Units (Sale and Bairnsdale), 12 month appointments are offered, then a complete roll over of staff occurs. This is not considered long enough as all knowledge, expertise and development of relationships, particularly in the Aboriginal sector is lost. The Morwell model works much better where staff are retained. Most workers agree that these positions should be gazetted positions so that the Police who really want to be in these roles will apply.<sup>188</sup>

Domestic Violence Victoria echoed this view:

There is considerable turnover of police ... working in the family violence area which impacts on communications within police and with FV agencies, institutional knowledge on family violence, and quality and consistency of practice.<sup>189</sup>

Victoria Police members told the Commission that there are arguments for and against both gazetted and rotational family violence specialist roles. Sergeant Deryn Ricardo, Family Violence Advisor for Divisions 5 and 6 of the Eastern Region, who favoured gazetted positions, summarised the competing imperatives:

We need people in those roles that want to do the job, not be told that they are doing that. Sometimes with the family violence liaison officers it's part of a portfolio that they have along with a number of other things, and people are told they are doing it. Another aspect of that, we have rotation through these units. We lose the experience. They gain experience, they go back out. There is two schools of thought, that they are taking that experience back to the uniform. But when we are losing that within the team it makes it hard because they have networked and that takes a while to do.<sup>190</sup>

Sergeant Spriggs explained the benefits of rotating staff through the family violence teams, with sergeants spending 12 months and constables and senior constables six months on a rotation:

... we want to build the expertise within the team to that where they are providing a specialist response. If we churn the members through there too fast that expertise is difficult to maintain. Also the training requirements on the sergeants and the other members there, when you are constantly pushing new members through, tends to take more of a front seat than the actual work. So if we slow the churn rate through the family violence team down, we get a lifting of the specialist skills and we also reduce the pressure on the sergeant to constantly be training.<sup>191</sup>

Superintendent Stuart Bateson, Divisional Commander for Division 2 of the North West Metro Region, also spoke about this:

I think the ideal model from my point of view would be to have two or three members stay there and then rotate some others through, because there is a benefit of rotating members through; they do build their expertise, they do build their knowledge and they take it back to the front-line. So striking a balance of building the expertise and spread[ing] the knowledge is important too.<sup>192</sup>

Assistant Commissioner McWhirter explored these competing imperatives and how a balance might be achieved:

[T]here are huge benefits to actually putting people in roles for a certain period of time to get that experience, to increase their level of understanding and knowledge and then going back into the front-line and actually sharing that knowledge and educating those. It's just another way to actually educate our workforce ... Whether six months is enough for constables and senior constables is to be decided. It may be 12. But ... you have to find people who actually want to stay in one location such as a specialist team for 12 months as well.

Some people won't be suited to it, either ... If you want to deal with specialist environments, dealing with really critical issues of victims, you also have to have the right people doing those roles. So management need to have the flexibility, if they put somebody in those roles, to also move them out if they are not suitable.

So, permanency of roles is more about, from my perspective, permanency of positions under a proper management structure, not necessarily having permanent people in those positions for extended periods of time.<sup>193</sup>

The educational and training benefits of rotations through family violence teams are discussed in Chapter 14.

The Commission also notes that, beyond family violence teams that are made up of general duties police, family violence liaison officers, who are present at all 24-hour police stations, are portfolio roles, meaning that many police members are part time and not fully devoted to the family violence function. In contrast, family violence advisor positions are gazetted roles. Sergeant Spriggs explained the expectations of a portfolio role to the Commission:

It is a portfolio role, so they are expected to do normal sergeants' duties which will include patrol supervisor duties as well and just do their portfolio work. They will be assigned time to do that on their roster.<sup>194</sup>

On a related matter, the Commission was told of significant demands are made on family violence liaison officers' time.

## Maximising police capacity to respond to family violence

The Commission received evidence on possible changes to police powers and responsibilities, tactics, tools and resources to support the delivery of high-quality, victim-centred responses to family violence in an environment of escalating demand.

### Powers and responsibilities

#### Body-worn cameras

In a letter dated 14 December 2015, the Chief Commissioner of Police, Graham Ashton AM APM, outlined for the Commission's consideration a proposal to deploy body-worn cameras to improve the police response to family violence.<sup>195</sup> The Chief Commissioner met with the Commission on 18 December 2015 to provide further details about his proposal. He described the rationale underlying his proposal:

Improved evidence collection, processing and prosecution are some of the primary reasons why Victoria Police is considering BWCs [body-worn cameras]. In particular, we are of the view that there is potential for BWCs to be a beneficial tool in the response to and management of family violence incidents. Capture of the crime scene and the immediacy of victim and perpetrator statements could drive both increased pleas and successful prosecutions and also reduce the impact of the justice process on victims (by allowing them to make statements at the time of first police attendance).<sup>196</sup>

The Chief Commissioner noted that legislative amendments would be required in order to gain the full evidentiary benefit of BWCs, as alluded to by the Director of Public Prosecutions, Mr John Champion SC, who lent his support to consideration of the use of the cameras:

... I would be very interested to see whether or not a system could be engaged where a police officer who may have a camera attached to them is able to effectively take a statement contemporaneously from the victim when he or she attends at the commission of the crime, at the home or wherever, so that if a complainant is making a complaint in only perhaps a short time after the event has happened, I think we need to think about whether or not the recording of that piece of evidence can be rendered into an admissible state.

Why I say that is that one of the problems that does beset us, particularly in the family violence area because of the complexity of the relationships, is that people do back out of a prosecution six, 12 or 18 months down the track.<sup>197</sup>

As the Chief Commissioner observed, BWCs have been trialled or adopted in a number of jurisdictions in Australia, in the United Kingdom and North America, often in the hope of improving the police response to family violence, among other things.<sup>198</sup> In New South Wales, for example, amendments to criminal procedures legislation took effect from 1 July 2015, allowing for video-recorded statements taken using BWCs to be admitted as evidence. The Domestic Violence Evidence in Chief initiative aims to reduce trauma for victims, reduce difficulties associated with remembering incident details, bring the victim's experience to the courtroom, and reduce or eliminate intimidation of the victim to change their evidence, thereby increasing guilty pleas and conviction rates.<sup>199</sup>

The Domestic Violence Evidence in Chief initiative includes a number of safeguards aimed at protecting the rights of victims and perpetrators. NSW Police members who exercise their discretion to use a BWC must do so overtly—for example, by informing individuals that they will be recorded.<sup>200</sup> Police members must undergo specific training before operating BWCs in the field. The victim must give their informed consent for their statement to be recorded by BWC.<sup>201</sup> Once the video statement is obtained, however, it is the prosecutor who decides whether the statement will be used in evidence (even if it is against the victim's wishes). The rights of defendants to procedural fairness are protected by a right to view the video footage and to cross-examine the complainant.<sup>202</sup>

The New South Wales body-worn camera program is being evaluated by Charles Sturt University.<sup>203</sup> The London Metropolitan Police implemented a large-scale pilot of BWCs in May 2014,<sup>204</sup> but to the Commission's knowledge the results of the evaluation of the pilot have not yet been published. A body of literature on the use of BWCs by police is, however, emerging, albeit based on a limited number of studies of smaller-scale trials that vary in focus, technology and procedure.<sup>205</sup>

The literature and commentary on BWCs in the family violence context identify both promising and beneficial aspects, and areas of caution and concern. Surveying the evidence in 2014, White identified the following perceived benefits and concerns:<sup>206</sup>

#### Benefits

- ▷ increased transparency and legitimacy
- ▷ improved police officer behaviour
- ▷ improved citizen behaviour
- ▷ expedited resolution of complaints and lawsuits
- ▷ improved evidence for arrest and prosecution
- ▷ opportunities for police training

#### Concerns

- ▷ citizens' privacy
- ▷ officers' privacy
- ▷ officers' health and safety
- ▷ training and policy requirements
- ▷ logistical and resource requirements, including data storage and retrieval.

An evaluation of a trial in Phoenix, Arizona, found that after BWCs were introduced, domestic violence cases were significantly more likely to be initiated and result in charges and a guilty plea or verdict.<sup>207</sup> The evaluation also raised questions, however, about the effect of BWCs on processing times—for example, with officers reporting that downloading data was time consuming and prosecutors expressing concern about not having enough time to view videos before court.<sup>208</sup> The Phoenix study also reviewed other BWC evaluations, noting the following:

- ▷ A trial in Plymouth, United Kingdom, found that BWCs improved evidentiary quality and charge rates, while reducing the time spent on paperwork and complaints against police.
- ▷ A trial in British Columbia, Canada, found that the approval rate for charges submitted increased, but more officer time was required to complete the paperwork.
- ▷ Two trials in Scotland found that BWCs resulted in cases being processed to guilty pleas or verdicts faster than those outside the study period.<sup>209</sup>

The Commission is not aware of any studies that have examined the effect of BWCs on victims' experiences, although academic commentators have expressed concern about possible unintended consequences. Professors Heather Douglas, Professor of Law, Queensland University and Leigh Goodmark, Professor of Law, University of Maryland have observed that, by the time police attend a family violence incident, the perpetrator might seem calm while the victim appears irrational or angry, such that BWC footage can undermine the victim's credibility in court.<sup>210</sup> One-off video footage can also fail to capture the complexity of the abuse and provide a misleading picture of the relationship, potentially criminalising the victim if it depicts injuries inflicted on the perpetrator in self-defence.<sup>211</sup> Videos might also be used to coerce participation of victims of family violence in criminal proceedings.<sup>212</sup> The Commission notes that in the ABC Television documentary *Hitting Home* a victim was initially reluctant to make a video statement but was eventually persuaded to do so by her sister and the police officer.<sup>213</sup>

The Victoria Police submission acknowledged that victims might have 'legitimate reasons' for not wanting to prosecute the perpetrator.<sup>214</sup> The submission echoes this sentiment by stating that requiring victims to give direct evidence to the court places considerable pressure on them and shifts the burden of holding the perpetrator to account onto the victim.<sup>215</sup>

During debate on the New South Wales legislative amendments designed to facilitate the use of BWCs in family violence cases, it was noted that the recorded material will often be highly personal and extremely graphic.<sup>216</sup> Although there are legislative safeguards to protect a victim's privacy,<sup>217</sup> in practice the ease of uploading recorded material to the internet, and then the considerable difficulty of having it deleted, creates an increased risk of a recorded statement being disseminated. Perpetrators can use this as a tactic to embarrass, intimidate or threaten the complainant.

The New South Wales Attorney-General outlined the benefits of allowing victims of family violence to give their evidence-in-chief by way of a previously recorded video or audio statement:

The power dynamic that typifies domestic violence does not stop at the courtroom door. There is a risk of re-traumatisation of victims. They must attend court and give oral evidence from memory, and usually in front of the perpetrator, about a traumatic incident. They may face pressure from a perpetrator to stop cooperating with the prosecution. This can result in victims being reluctant to come to court or changing their evidence once in the witness box. Some may choose to not report an incident to police. The Bureau of Crime Statistics and Research estimates that only half of domestic assaults are reported to police. New measures for giving evidence using available technology are needed to reduce the trauma faced by victims when in court.<sup>218</sup>

### **Personal service of orders by police members**

The Commission considered evidence on the efficacy and efficiency of police being responsible for personally serving orders under the *Family Violence Protection Act 2008* (Vic).

Generally speaking, police and the courts cannot enforce family violence intervention orders until the order is personally served on the respondent. Specifically, the offences of contravening of a family violence intervention order (interim or final) contained in the *Family Violence Protection Act* apply only if the respondent has been served with a copy of the order, or has had the order explained to them in accordance with:<sup>219</sup>

- ▷ section 57 of the Act, which requires the appropriate registrar to give a written explanation—and, if the person is before the court, a clear oral explanation—of an interim order to the respondent (and protected person) or serve it on the respondent (and protected person) if they are not before the court<sup>220</sup>
- ▷ section 96 of the Act, which requires the court to give a clear oral explanation of a final order, along with written explanation of the order, to the respondent (and protected person) if they are before the court.<sup>221</sup>

The *Family Violence Protection Act* provides that if a court makes, varies, extends or revokes an interim or final family violence intervention order a copy of the order must be personally served on, among other people, the respondent, each party to the proceeding and the Chief Commissioner of Police.<sup>222</sup> The court may make an order for substituted service (by any means considered appropriate) if it appears that it is not reasonably practicable to effect personal service.<sup>223</sup>

Although there is no statutory obligation for police to effect service of orders under the Act, police uphold this responsibility as a matter of practice and in the absence of any alternative arrangements.

Assistant Commissioner Cornelius' statement outlined the procedural steps for service:

- ▷ The court registrar faxes a copy of the order to the Victoria Police Central Data Entry Bureau, which records its existence on the LEAP database.
- ▷ The court registrar faxes another copy of the order to the relevant police station.
- ▷ The police station arranges service.
- ▷ Once the order is served, the police member completes an affidavit of service, notifies the affected family member, faxes a notification of service to the Central Data Entry Bureau, which records service on LEAP, and then the member records service directly on LEAP themselves.<sup>224</sup>

Assistant Commissioner Cornelius also noted that the number of attempts to effect service and how long police persist in such attempts are at the discretion of the relevant police officer. He added that Family Violence Command is reviewing relevant parts of the Victoria Police Manual to clarify the time frame within which a family violence intervention order should be served or, if it is unable to be served, returned to the court for consideration of substituted service options.<sup>225</sup>

The Western Melbourne Child and Family Services Alliance also expressed concern about the time lag between the making of an order and its being served on the perpetrator and the risk posed to women and children if service cannot be effected.<sup>226</sup>

As noted, McAuley Community Services for Women holds the view that limited police resources can affect the timely service of family violence intervention orders.<sup>227</sup> The Federation of Community Legal Centres agreed, stating:

There are safety issues for [affected family members] when orders have not been able to be served on respondents, because interim orders are then not enforceable. [Community Legal Centres] recognise that sometimes in these situations delay is unavoidable, especially in rural or cross-border contexts where it may be hard to locate the respondent. Police are also under-resourced for this task in some regions.<sup>228</sup>

Victoria Police provided to the Commission the data shown in Table 15.7 on the length of time that it takes to serve orders.<sup>229</sup>

Table 15.7 Number and percentage of family violence orders served, by type and days taken to serve, 2014–15

Days taken to serve	Intervention orders		Safety notices		Total	% of total
	No.	% of total orders	No.	% of total notices		
0 days	17,487	61.09	10,815	98.48	28,302	71.46
1–5 days	5,494	19.19	163	1.48	5,657	14.28
6–10 days	2,099	7.33	2	0.02	2,101	5.30
11–15 days	1,069	3.73	1	0.01	1,070	2.70
more than 15 days	2,477	8.65	1	0.01	2,478	6.26
Total	28,626	100.00	10,982	100.00	39,608	100.00

Note: Days taken are calculated as the difference between 'date served' and 'date order valid from'.

Source: Victoria Police, 'Time taken\* (days) to serve intervention orders and safety notices, Victoria, 2014/15' (12 November 2015) provided to the Commission by Victoria Police, 17 November 2015.

Victoria Police proposed removing the requirement for personal service of family violence intervention orders and instead allowing alternative service methods.<sup>230</sup> The rationale for this approach is that:

- ▷ In many instances police must make multiple attempts to locate a person for service.
- ▷ Some perpetrators deliberately evade police, delaying execution of protective mechanisms.
- ▷ If no existing protections are in place, any delay poses a risk to victims.
- ▷ The intention is not to require the use of alternative means but to remove the current need for personal service. If a person is known to have a cognitive impairment or to face language barrier, they could still be served personally to ensure that they understand the order.<sup>231</sup>

In his report on the inquest into the death of Luke Batty, Judge Gray noted concerns about delays in the service of orders. In particular, he found, '[D]elays in serving FVIOs resulted in protective measures for Luke expiring'.<sup>232</sup> He found further that in this case 'the delay in serving the FVIOs was as important as the delay in executing the warrants [for arrest]'.<sup>233</sup>

Judge Gray recommended:

all FVIOs be served on the Respondent with priority and where service can not be effected substituted service from the Court be obtained within 24 hours;<sup>234</sup>

all warrants issued in relation to family violence related incidents be executed with high priority ...<sup>235</sup>

In response to this recommendation, Victoria Police and the Victorian Government stated:

A review of guidance in the Code of Practice which requires service of intervention orders to be executed within a 'reasonable time' is currently underway, and Victoria Police is also exploring options for interim measures to ensure service of FVIOs are prioritised.

The 24-hour time frame is not considered feasible, as in many cases personal service can require more than one service attempt by police and an inability to serve an order within 24 hours is not necessarily indicative of a perpetrator proactively avoiding service.

If unserved intervention orders were to be returned to court within 24 hours of issue, this is likely to significantly increase the number of intervention order subject to a substituted service order and potentially increase the likelihood of contraventions due to respondents not being aware of orders or the conditions of orders.

Victoria Police will consider improvements to these processes in line with the Victoria Police submission to the Royal Commission into Family Violence, suggesting that wider reforms to the service of intervention orders are required to reduce the need for personal service.<sup>236</sup>

### **Police-issued intervention orders**

When police attend a family violence incident they have the power to issue family violence safety notices without court approval in order to afford victims immediate protection.<sup>237</sup> Family violence safety notices are an interim measure and last up to five working days.<sup>238</sup> In Chapter 16, the Commission recommends that the effectiveness of safety notices be extended from five to 14 days after the notice is served and sets out its reasoning for this recommendation.

Safety notices also serve as a police application to the relevant court for a family violence intervention order.<sup>239</sup> At present only a court can make a family violence intervention order, which provides protection for a set period. Victoria Police considers its members should be able to make family violence intervention orders in the field, without the need to go to court (although parties could elect to do so). This would replace the current family violence safety order process.<sup>240</sup> In its submission, Victoria Police advocated enabling police to vary intervention orders in the field.<sup>241</sup>

Plenty Valley Community Health called for police to adopt some of the powers currently held by the court and seemed to support the notion of police being able to issue at least some intervention orders:

It is our view that the process of seeking intervention orders from the Magistrates' Court and prosecuting breaches of these orders ties up an inordinate amount of valuable Police time. We believe that many of the interventions required of the Magistrate's Court could be replaced by processes that could be automatically enacted by the Police. We believe that this approach could release scarce Police resources for purposes of directly curtailing, preventing and responding to family violence. In cases where a victim agrees to vacate an intervention order against the perpetrator, then the basic conditions (apart from access exclusion but prohibiting family violence, destruction of property etc) should be held in force for a minimum period of one year.<sup>242</sup>

The Victoria Police submission pointed out the advantages of its proposal, along with the things that would need to happen before the proposal could be implemented—such as enhanced risk assessment and improved training. Victoria Police argued that police-issued family violence intervention orders would better safeguard victims and hold perpetrators to account by:

- ▷ enabling police to tailor orders to the behaviour of the perpetrator and the specific circumstances of the victim
- ▷ enabling swift action on behaviour of concern
- ▷ immediately serving the order if the perpetrator is present
- ▷ enabling police to act immediately on any breach
- ▷ sparing victims further impacts associated with travel, contact with the perpetrator or attending court when neither party contests the terms of the order.<sup>243</sup>

Further, Victoria Police stated that police would use the standardised and updated Family Violence Risk Assessment and Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) to differentiate levels of risk and response according to agreed criteria.<sup>244</sup> As recommended in Chapter 14, a Victoria Police Family Violence Centre of Learning would deliver tailored training programs in this regard.<sup>245</sup>

On the question of safeguards, the Victoria Police submission stated that 'victim and perpetrator would reserve the right to appeal the order at court' and that acceptance of the order would not amount to an admission of guilt by the perpetrator.<sup>246</sup>

Assistant Commissioner McWhirter told the Commission the primary motivation behind this proposal is to provide better support to victims:

[T]his is about looking through the lens of the victim. If you think about the fact that we are called into their house, location, wherever they may be, if we think about the process that then has to follow for the victim, it's an extremely onerous, difficult path that they then have to go through. So, in terms of practice, they still have to turn up to court, they still have to think about child arrangements, they still have to think about work arrangements, then when they get to court they do not even know when they could be actually getting heard ... So the intent around issuing an intervention order immediately is about the immediacy of the response, the immediacy of the protection and the capacity for it to take that pressure off the victim, because it's all about them. It's not about Victoria Police and Victoria Police powers. It's not about the judicial process. It's about looking after the victim.<sup>247</sup>

Assistant Commissioner McWhirter also argued that these police-issued orders would save time for police and the courts but emphasised that this is secondary to the main aim of increasing safety for victims.<sup>248</sup> The Victoria Police submission stated:

For the system, freeing police from preparing matters for court, attending court (sometimes on multiple occasions), and locating the perpetrator in order to serve the application or interim or final order, would enable them to focus more intensely on at-risk and high-risk families. The court would be freed from the volume of administrative applications and uncontested orders in order to focus on hearing appeals, family violence charges and oversighting compliance with conditions ...<sup>249</sup>

Assistant Commissioner Cornelius also told the Commission that police-issued orders would hold perpetrators accountable and prevent them from 'gaming' the system. The orders would afford victims:

... immediate justice in terms of holding an offender accountable so that he doesn't have the opportunity to walk away before process is served on him, but also is put in a situation where he is clearly given to understand what his obligations are and then he knows that the police are going to hold him accountable to it, without an opportunity for him to drag the victim back before the court or indeed to get the court date and then not turn up.<sup>250</sup>

Apart from the Victoria Police material and the Plenty Valley Community Health submission, the Commission received little oral or written evidence exploring the merits or otherwise of police-issued intervention orders. The 2010 Australian Law Reform Commission—New South Wales Law Reform Commission report *Family Violence: A National Legal Response*, did, however, canvass the topic of police-issued intervention orders in some detail.<sup>251</sup> The commissions took account of submissions from a broad range of stakeholders and specific feedback on questions about police-issued protective orders posed in a consultation paper.<sup>252</sup> They concluded that family violence protection orders should, wherever possible, be made or authorised by a judicial officer for a number of reasons:<sup>253</sup>

- ▷ Decisions that curtail individual rights and liberties should ideally be made by judicial officers.
- ▷ Judicial officers bring strong training and an understanding of family violence dynamics and legislation to bear when considering orders.
- ▷ The parties have a greater opportunity to be heard and have the benefit of lawyers, translators and support services.
- ▷ The judicial officer can impress on perpetrators society's intolerance of family violence.
- ▷ Courts can refer perpetrators and victims to services and programs.<sup>254</sup>

The commissions noted that a number of submissions argued that police-issued orders can be valuable in emergency situations<sup>255</sup> but few supported a broader roll-out of police powers to make orders as with the Tasmanian model.<sup>256</sup> In its submission to that inquiry, the Police Association of New South Wales, noted that 'more victims will come forward if they do not need to go to court'.<sup>257</sup>

The Commission understands that Tasmania, which is a much smaller jurisdiction than Victoria, is the only state that empowers police to issue family violence intervention orders for extended periods—in Tasmania's case, for up to 12 months. The *Family Violence Act 2004 (Tas)* provides that a police officer of the rank of sergeant or above, or authorised by the Chief Commissioner of Police may make a police family violence order and issue it to a person if satisfied that the person has committed, or is likely to commit, a family violence offence.<sup>258</sup> A PFVO can include a range of conditions, including to:

- ▷ vacate premises and/or not enter premises except on certain conditions<sup>259</sup>
- ▷ surrender any firearm or other weapon<sup>260</sup>
- ▷ refrain from harassing, threatening, verbally abusing or assaulting the victim<sup>261</sup>
- ▷ not approach within a specified distance the victim, named other person or premises<sup>262</sup>
- ▷ refrain from contacting an affected or named person otherwise than under specified conditions.<sup>263</sup>

As noted, a PFVO may be made for up to 12 months, and it can be varied, extended or revoked by the Magistrates Court on application by police, the victim or the perpetrator.<sup>264</sup>

PFVOs can be issued by a sergeant or authorised constable if a risk assessment suggests a low or medium risk of further family violence and if it is necessary to protect the safety, wellbeing and interest of victims.<sup>265</sup> If the risk assessment suggest high risk, police must apply to the Magistrates' Court for a family violence order.<sup>266</sup>

The Commission studied a range of reports on and evaluations of the Tasmanian model. A review of the Tasmanian Act commissioned by the Tasmanian Department of Justice in 2008 found that 'the safety of adult victims of family violence has seen improvement, particularly at the first point of contact with police, as a result of the new police powers and changed practices',<sup>267</sup> although the extent to which this can be attributed to PFVOs was not specifically explored.<sup>268</sup>

The review also found that defendants and complainants do not always understand their obligations in relation to police and court-issued orders—particularly if English is a second language, if poor literacy is a feature or if younger people are involved.<sup>269</sup> In addition, while some stakeholders viewed the PFVOs as problematic as a matter of legal principle, the balancing factor of parties being able to apply for variations obviates the need for the court to review every matter and provides an avenue for both parties to seek variation of an order.<sup>270</sup> Other stakeholders expressed concern that 'blanket' PFVOs—especially in relation to contact between defendants and children—often require variation by the court.<sup>271</sup>

A similar point was made in a 2015 Tasmanian Department of Justice internal performance review of the Safe at Home program. This review acknowledged the ability of a PFVO to provide immediate safety to the victim but noted stakeholder feedback suggesting PFVOs that exclude the offender from the home could lead victims to avoid engaging with the system if future violence occurs.<sup>272</sup> Stakeholders recognised, however, that PFVOs can be varied or revoked in court (see Table 15.8), which 'helps overcome these long term exclusions'.<sup>273</sup>

Table 15.8 Number of PFVOs issued, revoked and varied, 2009–10 to 2013–14

	2009–10	2010–11	2011–12	2012–13	2013–14
PFVOs issued	1885	1709	1631	1559	1634
Revocation applications	46	52	55	43	58
% of PFVOs revoked	2.44	3.04	3.37	2.76	3.55
Variation applications	59	61	82	77	85
% of PFVO varied	3.13	3.57	5.03	4.94	5.20

Note: The number of PFVOs issued is sourced from the Department of Justice. The number of revocation and variation applications are sourced from the Magistrates' Court. While these may relate to different datasources, the percentages above give an indication of the number of revocation and variation applications as a percent of the total number issued.

Source: Sentencing Advisory Council (Tas), *Sentencing of Adult Family Violence Offenders: Final Report No 5* (Department of Justice (Tas), October 2015) 9; Magistrates' Court of Tasmania, *Annual Report 2012–13* (2013) 37; Magistrates' Court of Tasmania, *Annual Report 2014–15* (2015) 39.

The efficacy of PFVOs was recently considered by the Tasmanian Sentencing Advisory Council in its report *Sentencing of Adult Family Violence Offenders: Final Report No. 5, October 2015*.<sup>274</sup> The report notes that the breach rate for family violence orders has increased in the past decade, at the same time as the number of protection orders issued declined.<sup>275</sup> It observes that consideration could be given to moving away from the PFVO system in favour of a Victorian-style family violence safety notice approach, resulting in greater court supervision of the process.<sup>276</sup> This view is based on the following points:

- ▷ The lack of court supervision can mean offenders might not fully understand or appreciate the force the order carries, leading to increased numbers of breaches.
- ▷ Family violence incidents are often highly charged situations, and offenders might be affected by alcohol and other drugs, which can further exacerbate the difficulties in ensuring that offenders understand the terms of the PFVO.
- ▷ PFVOs cannot be tailored to suit the family unit as a whole in the way that court-supervised orders are. The Sentencing Advisory Committee's report emphasises that no breach is acceptable, but argues that this lack of flexibility might be contributing to an increase in breaches for objectively less serious behaviours or 'unwitting' breaches.
- ▷ There is a lack of understanding about the procedure for changing or revoking a PFVO.
- ▷ the Victorian system of family violence safety notices might be a better solution since the notices also function as a summons to appear to have an appropriately tailored final order determined by the court.<sup>277</sup>

The report also argues that adopting safety notices instead of PFVOs might reduce the numbers of applications to vary or revoke orders and free up court time to deal with more serious breaches.<sup>278</sup>

### **Information technology**

The Police Association Victoria argued that inadequate information technology (IT) systems are administratively burdensome and do not provide real-time access to information that would facilitate decision making in the field. It stated that, although the introduction of the LEDR Mk II system has improved recording practices, the process is still very time consuming and members often have to do overtime to complete paperwork associated with family violence incidents.<sup>279</sup> The Association also noted that paperwork is completed back at the station, which means that information is not recorded on the system in real time.<sup>280</sup> This poses safety concerns, as noted by a police member quoted in The Police Association Victoria's submission:

... when a complaint and warrant is taken out by a member after hours it is not recorded on LEAP and as such if the male is checked by another unit they are not aware of the outstanding file, this is the same for complaint and summons.<sup>281</sup>

The Code of Practice review that Victoria Police commissioned quoted feedback from a sergeant about the benefits to risk assessment of having access to LEAP in the field:

Risk assessment could be improved as it's most often done at the station and not at the scene. Members access LEAP at the stations and use LEAP to check history rather than asking the AFM [affected family member]. Members also act on the incident they are presented with and don't necessarily take the time to talk with AFM about the history until they get back to the station. So they rely on LEAP. Improvements could be to enable LEAP access at the incident to enable and encourage questioning about other historical reports and questioning for details about past incidents.<sup>282</sup>

The potential benefits of mobile technology were noted in the report on the coronial inquest into the death of Luke Batty:

The suggestion by the Expert Panel that officers be given electronic equipment such as iPads to fill in L17s at the point of contact has considerable merit in ensuring risk assessments are contemporaneous, accurate and comprehensive.<sup>283</sup>

In its submission, The Police Association Victoria illustrated the potential benefit of mobile technology by quoting a front-line police member:

If you had a laptop you could do it all while you're sitting around the kitchen table. Get it knocked over and then move onto the next job. Because you're doing it all anyway in your notebook. You get verbal family violence incidents – you might go to two or three a shift. And, if you're busy, you can't go back to the station to do the first lot of reports. So you're at the back end of the shift and you've got three lots of 10 reports to do.<sup>284</sup>

The introduction of mobile technology also aligns with Victoria Police's strategic direction. In the 2013–14 State Budget, Victoria Police received funding for the Policing Information Process and Practice Reform Project, which will shape long-term development of information requirements for operational police.<sup>285</sup> An immediate focus of the PIPP Project is to expand mobile technology to enable access to information in the field.<sup>286</sup> Victoria Police began building the case for mobile technology capability for front-line policing in 2013–14.<sup>287</sup>

Victoria Police's focus on mobile technology is also in keeping with developments in other jurisdictions. For example, Tasmania Police has issued laptops to all operational police members, giving them access in the field to key police databases and, for example, enabling victims to sign statements on site. Western Australia, New South Wales and Queensland Police have conducted or are conducting trials of mobile devices for certain applications.<sup>288</sup>

The Victoria Police Blue Paper sets out a vision for technology-enabled policing that offers benefits beyond providing mobile applications and streamlined administrative arrangements for key family violence processes and procedures. IT enhancements will deliver administrative efficiencies more broadly for a police service in which members currently spend about 50 per cent of their time on each shift in the station and a large proportion of this time is dedicated to information capture and reporting:<sup>289</sup>

A policing future enhanced by technology will see Victoria Police members freed from time-consuming processes and awkward information systems, so that they can spend more time on prevention on the frontline.<sup>290</sup>

## The way forward

Victoria Police has shown great leadership in its response to family violence and changing community attitudes associated with such violence. For example, it has developed a Code of Practice to guide members and established specialist family violence roles, teams and, most recently, Family Violence Command. It has responded to an increasing number of incidents and has taken criminal and civil action in an increasing proportion of cases.

The Commission was informed that the task of responding to family violence, more than other crime types and community harms, falls largely to front-line police. At the same time, recidivist offenders take up a disproportionate amount of police resources. High and escalating demand is placing pressure on police. Police members grapple daily with archaic IT systems that limit the availability of information in the field and are administratively burdensome. And they spend a large amount of time personally serving family violence orders and applications.

A central decision for the leadership of Victoria Police concerns striking the right balance between specialisation and ensuring that all police members are sufficiently responsive to family violence. Leadership must also ensure that family violence attracts the same rigour in investigating, tasking and coordination as other crimes.

Victoria Police is well placed to build on its achievements and drive further reform, elevating the response to family violence to the next level. To succeed in this, it will need to work in close partnership with government, the courts and family violence services.

Leadership on family violence must extend beyond Executive Command and family violence specialists to the regional and divisional managers who allocate resources, senior sergeant officers in charge at stations, sergeants in supervisory positions, and members in investigative and response units, and intelligence units.

Promoting leadership on family violence broadly throughout the organisation will be facilitated by clearly outlining roles and responsibilities in relation to family violence in a revised operational 'doctrine'. It will also be achieved by making competency in family violence integral to career progression in the force and through implementation of other recommendations the Commission makes—for example, in relation to the development of a family violence career path and enhanced education and training throughout the force.

The reality is that family violence is now core police business. The challenge for Victoria Police is to ensure that this is reflected in all parts and at all levels of the organisation. This will involve hard work. At times it will require difficult choices and resistance may be encountered from some people in and outside the organisation. But it is a path that must be taken if Victoria Police is to continue to fulfill its mission to provide a safe, secure and orderly society by serving the community and the law. Indeed, Victoria Police is already well down this path. The Commission's recommendations in this chapter provide a road map for further action.

## A new authorising environment

### Revising the Violence Against Women and Children Strategy

Victoria Police Executive Command should assign to Family Violence Command the task of developing a revised Violence Against Women and Children Strategy, describing Victoria Police's vision, strategic objectives, key actions, and roles and responsibilities in combatting family violence. The revised strategy should have a clear focus on violence against women and children, but also reflect poorly understood forms of family violence as well as the diverse range of victim experiences. Among other things, the revised strategy should do the following:

- ▷ make it plain that family violence is a priority of, and core business for all of Victoria Police
- ▷ outline the roles and responsibilities of all parts of the organisation in preventing and responding to family violence
- ▷ emphasise that strong leadership is required from regional and divisional management, in addition to Family Violence Command, to achieve Victoria Police's and the government's objectives and to meet community expectations in this area.

As part of the revised strategy, Family Violence Command should develop and explain a Victoria Police operating model or 'doctrine' governing the response to family violence. This should provide a tiered response that clearly sets out the roles and responsibilities of each work unit in preventing and responding to family violence, so that every member and employee in the organisation understands how their actions contribute to broader organisational goals. The doctrine should include a baseline operating model for family violence teams, work on which is already under way. (The Commission's views on the baseline model are discussed shortly.)

The Commission notes that the Enhanced Family Violence Service Delivery Model, while conceptually sound, has been neither clearly communicated nor uniformly implemented, which has contributed to inconsistent police responses. To be successful, the revised strategy will require the commitment of strategic management centrally and regionally, secured and maintained through strong governance arrangements. It will also require renewed leadership throughout the organisation, strong performance monitoring and a performance management framework to promote consistent service levels, and adequate resourcing.

## A new performance management framework

As part of the revised strategy, Victoria Police should develop a new family violence performance management framework. This will ensure accountability and provide incentives throughout the organisation to encourage adequate commitment of resources to family violence across the state, so that service levels are consistent and outcomes are aligned with organisational strategy and expectations.

This process should include developing a broader range of performance measures than are currently included in the Violence Against Women and Children Strategy. Those measures were suitable for their time, but they now need to be expanded to include outcome and qualitative measures that provide a more holistic view of police service levels.

The Commission suggests that Family Violence Command take as its starting point the list of possible performance measures developed by the Australian Institute of Criminology:

- ▷ a reduction in repeat victimisation
- ▷ a reduction in repeat attendances
- ▷ a reduction in repeat offending
- ▷ an accurate identification and recording of incidents
- ▷ an increased number of offenders charged and successfully prosecuted
- ▷ more arrests and charges for breach offences
- ▷ ensuring police are adequately informed about previous attendance and criminal histories before arriving at an incident
- ▷ improved willingness on the part of victims to call and/or cooperate with police and increased victim satisfaction with the police response.

Specific measures could also be included in relation to compliance with the Code of Practice and other material such as the Victoria Police Intelligence Doctrine and the Advancing Investigation Management Compliance package—for example, measures such as the number of investigations undertaken by investigative and response units, the level of intelligence support, and the number of family violence persons of interest being managed. These and other measures should:

- ▷ align with Victoria Police's key family violence policing objectives and provide a fair and accurate measure of performance against those objectives
- ▷ provide appropriate incentives in terms of practice and resource allocation
- ▷ be supported by appropriate data sets and collection methodologies
- ▷ constitute or align with the additional performance measures recommended for inclusion in the state budget (see Chapter 41)
- ▷ be integrated with key organisational performance processes such as the Integrated Planning and Risk Management Model outlined in the Victoria Police Blueprint 2012–15.<sup>291</sup>

On this last point, the Commission notes that the new performance framework will probably require the use of new methodologies, beyond reliance on administrative data sets. These methodologies should include:

- ▷ victim satisfaction surveys
- ▷ legal system victim impact statements as a mechanism for using feedback to promote improvement<sup>292</sup>
- ▷ member surveys—for example, to provide a baseline and then monitor shifts in police attitudes to family violence—and self-reported understanding of the dynamics of family violence and proficiency in applying the Code of Practice. This could also be used as a mechanism for generating ideas for practice improvement
- ▷ a program of local and strategic compliance audits, as discussed under the heading 'Supervision, support and accountability' in Chapter 14.

Family Violence Command should manage performance monitoring and report to Executive Command on measures provided to it at regional, divisional and police service area levels. Furthermore, local-level reporting currently done by family violence liaison officers and family violence advisors should be standardised and the reports provided (in part or in full) to Family Violence Command, which could use this information to identify:

- ▷ emerging trends, problems or areas of concern
- ▷ high-performing areas, both for acknowledgment and to enable the dissemination of good practice
- ▷ areas where additional support or remedial action is required to lift standards.

In its annual report, Victoria Police should also report on satisfaction of performance measures included in the revised strategy. This should include performance on a statewide and regional or divisional basis. This is important for transparency and to build and maintain public confidence in the police response to family violence.

Building a robust performance management and evaluation framework is one thing. To meet the targets under the framework and encourage continual improvement, specialist and general duties police members and work units will need tools and supports. The Commission makes a number of recommendations to facilitate this in the remainder of this chapter. But before doing so it briefly describes its views on the role of Family Violence Command.

### **Family Violence Command**

The establishment of Family Violence Command presents an important opportunity to re-invigorate and focus leadership on family violence in Victoria Police and set the foundation for improvements in the future. Family Violence Command's success depends on it having the authority to lead the organisational response to family violence and manage change within the organisation—noting that it does not control resource allocation or have line management responsibility for specialist family violence positions.

Victoria Police will need to ensure that Family Violence Command has sufficient staff with a diverse range of skills and capabilities—including for example, policing; research and evaluation; stakeholder engagement; project management; psychology, criminology, social work and other social sciences; and experience working in family violence services. Family Violence Command will also need to establish strong links with regional management and work units within Victoria Police, along with formal and informal consultative structures with the family violence sector, government partners, academia and other stakeholders. These will provide the base for closer working relationships throughout Victoria Police.

A structured approach will be especially important in promoting close engagement with the courts, family violence and other legal and human services and to measure performance against indicators dependent on collective efforts—for example, on management of high-risk perpetrators.

Additionally, Family Violence Command's authority will depend on its reputation in providing leadership on evidence-based approaches to policing family violence, along with expert advice to facilitate effective service delivery, which remains a regional responsibility. It is therefore important for Family Violence Command to be resourced to:

- ▷ perform or commission program evaluations of particular Victoria Police initiatives
- ▷ monitor national and international research and practice
- ▷ commission research or enter research partnerships with ANROWS (Australia's National Research Organisation for Women's Safety) and academic institutions.

This will position Family Violence Command to build an evidence base of actions that work in response to family violence which can then be used to prompt continual improvement throughout Victoria Police.

## Recommendation 46

Victoria Police revise its Violence Against Women and Children Strategy and amend it to cover all forms of family violence, a diverse range of victims and all areas of operations and governance [within 12 months].

## Recommendation 47

Victoria Police develop a new family violence performance management and reporting framework, with a broader range of quantitative and qualitative performance measures [within 12 months] against which it reports annually and publicly, on a statewide, regional and divisional basis.

## Recommendation 48

Victoria Police's Family Violence Command set performance measures for policing of family violence at regional levels, taking into account demand for family violence policing at police service area and divisional levels. Regional Assistant Commissioners should report to the Chief Commissioner of Police and Executive Command through the Family Violence Command against these performance measures [within 12 months].

## Specialisation in family violence

The Commission received strong positive feedback on the competence, sensitivity and understanding of police members in specialist family violence roles.

Although general duties police will continue to be the crucial first-responders in the future, in view of the number of family violence incidents reported in the state, stronger specialisation is needed in order to further improve Victoria Police service levels. A suitable level of specialisation will contribute to:

- ▷ a tiered police response, with an escalating level of management and intervention depending on the seriousness and complexity of the case
- ▷ expert advice and support for front line police
- ▷ quality assurance, supervision and training for the front line
- ▷ improved and consistent service standards, leading to improved outcomes for victims and their children and for the broader community.

### A clear career path

Victoria Police's organisational structure does not yet reflect the importance of family violence as a community safety concern, or its significance as a driver of demand for police services. The current family violence career path is limited by the scarcity of gazetted positions and the lack of opportunities for promotion—particularly beyond the rank of sergeant. A well-developed organisational structure and career path will encourage the best and brightest in Victoria Police to serve in this area and will also attract people with diverse, non-traditional skills and experience to pursue a career with Victoria Police.

In order for this to be achieved, the Commission proposes that Victoria Police review its specialist roles to develop an organisational structure with clear and logical management lines and positions with complementary and aligned functions. The family violence structure should also include positions of the necessary rank to allow equal participation in decision-making forums such as the Tasking and Coordination Committees (discussed shortly).

This review should consider the adequacy of resourcing for the family violence liaison officer role (that is, the specialists based at 24-hour police stations). In particular, it should consider whether this should remain a portfolio role. Being in a portfolio role can make it difficult to attract personnel, and it can result in specialist skills and expertise built up and then lost. It also inhibits the development of close working relationships with family violence and other services.

A family violence liaison officer role has a broad span of responsibilities and provides a specialist point of contact at the station level for other police members, victims of family violence and service providers. They also have important quality assurance and compliance functions, which should be expanded. It is critically important for Victoria Police to ensure that the resourcing model for family violence liaison officer positions is adequate to allow incumbents to perform all their functions effectively.

## Recommendation 49

Victoria Police adapt its career structures to reflect family violence as core business [within two years] by:

- ▷ providing an organisational structure for specialist family violence positions
- ▷ providing a clear career progression path for members who have a continuing interest in family violence policing—including through gazetted additional positions
- ▷ having positions with appropriate ranks to represent family violence policing in key operational and strategic management forums and processes
- ▷ ensuring that resourcing models and processes enable police in specialist family violence roles to perform their functions
- ▷ considering involving non-sworn employees with relevant skills in incident response
- ▷ recruiting personnel from a broader range of disciplines—such as social work, psychology or specialist family violence services.

## Family violence teams

The expansion of family violence teams to 32 locations in the state has been a positive development in improving the quality and consistency of police responses to family violence. The Commission heard, however, that there is much variation from team to team in terms of their functions, focus, resourcing levels, staff tenure and operating models.

### A consistent operating model

Variation in operational models can encourage innovation and provide flexibility to meet local needs. For example, some family violence teams have embedded in them professionals from family violence services or other disciplines, and local multi-agency initiatives to coordinate the management of high-risk and complex cases have been established.

The Commission also acknowledges Assistant Commissioner Cornelius' point that differences in operating models are necessary adaptations to local service systems. The Commission does not want to stifle innovation, especially since specialist police responses to family violence are still developing. Victoria Police should be encouraged to try new approaches to build on the principles set out in the Violence Against Women and Children Strategy, provided these approaches are based on sound logic, their effectiveness is evaluated, and they give priority to the safety of victims.

Nevertheless, having multiple models of what a family violence team does, and how it does it, can also give rise to inconsistent service levels and a lack of clarity about the role of the teams and their relationship with general duties police. Greater clarity and consistency in relation to the size, function and composition of family violence teams is needed. Work on this has already begun: Family Violence Command is developing a baseline family violence team model. This will allow a balance to be struck between adopting a common focus and evidence-based, consistent operating models, while still preserving the flexibility needed to respond to local demands.

This also presents an opportunity for Family Violence Command to develop a suite of evidence-based and centrally supported operating models that can be built on according to local circumstances. The evidence base should be drawn from review and evaluation of current approaches and from best practice in other jurisdictions.

In support of that review the Commission considers that the core functions of family violence teams should include:

- ▷ managing high-risk, complex and recidivist cases
- ▷ investigating serious and complex cases
- ▷ supporting general duties police and specialist units.

Before discussing these core functions, the Commission notes that in developing a baseline family violence team model, Victoria Police will want to be open to flexible staffing arrangements in different locations. For example, in some parts of the state it might be appropriate for an Aboriginal community liaison officer to sit within a family violence team; in other cases, police might take a multi-disciplinary approach by employing, say, a family violence worker, a social worker or a psychologist to meet the needs of a particular locality. Greater use of or links with youth resource officers, as is the case with Taskforce Alexis, to respond to adolescent use of violence in the home, would also be of value.

#### **Managing high-risk, complex and recidivist cases**

A primary function of family violence teams should be the management of high-risk, complex and recidivist offenders within their relevant geographic catchment areas. This is not, however, the task of family violence teams alone. Family violence is the responsibility of all parts of Victoria Police.

At present family violence teams focus particularly on recidivist offenders and victims of repeat violence, 'recidivists' being defined as those who have been involved in three or more family violence incident reports in a rolling 12-month period. Although recidivism should be taken into account as part of the risk assessment process, it should not of itself escalate a matter to the attention of a family violence team ahead of higher risk cases. There are indeed connections between recidivism and risk, but the relationship is not linear.

Different family violence teams currently use different risk assessment tools to determine which perpetrators should receive a more intense police focus. This contributes to inconsistency and is inefficient. The Commission is particularly concerned that variations in risk assessment methodologies adopted by family violence teams and the continued use of risk assessment tools that have not been validated, are leading to differing service levels according to where an incident occurs. Family violence teams should use a common tool or process for this task.

#### **Investigating serious and complex cases**

Family violence teams should have a clearly defined investigative role. This role should focus on more serious and complex cases that would stretch the capability of general duties police but are not so serious as to warrant being handed over to an investigation and response unit.

Family violence teams need to lift their investigative capability and capacity to fulfill this function. There are many ways of achieving this, as discussed shortly in the 'Criminal investigations' section. Whatever option is chosen, the Commission notes that, if the investigative capability of family violence teams improves, so too will their status, profile and attractiveness as places to work.

## Supporting general duties police and specialist units

Family violence teams should provide a clear and consistent service to general duties police and specialist work units. This will raise the teams' profile and expand understanding of their role and value in the force.

In the Commission's view, family violence teams should be available to provide specialist real-time support for front-line general duties police and should perform the function of serving family violence intervention orders and related documentation on respondents who are elusive or evasive. The educative role of family violence teams should be explicitly recognised.

The Commission was attracted to the benefits of family violence teams providing a first-response function, as outlined in Sergeant Spriggs' evidence and summarised in Table 15.9. It is, however, also mindful of Assistant Commissioner Cornelius' evidence that the first responder role is not the best use of family violence team resources in the busiest areas of the state.

As part of the process of developing a baseline family violence team model, Victoria Police should adopt a consistent position on family violence teams' first-response role. One option is for this to be a local decision but one that is in keeping with criteria that are set centrally; for example, the family violence team should perform first-responder duties so long as the local demand for managing high-risk and recidivist offenders is not too great. The Commission is particularly concerned, however, that any baseline family violence team model does not lead to the unintended consequence of family violence being seen as marginal, rather than core business.

Victoria Police should weigh up the advantages and disadvantages of giving family violence teams the first response role—see Table 15.9.

Table 15.9 Family violence teams and first response: advantages and disadvantages

Advantages	Disadvantages
<ul style="list-style-type: none"><li>▷ Provides increased first-response capacity to local supervisors, which is important given high demand (and may become more important if family violence teams increase in size and have gazetted positions).</li><li>▷ Frees up general duties officers for other patrol duties.</li><li>▷ Demonstrates the value of family violence teams to general duties police.</li><li>▷ Ensures high use of resources.</li><li>▷ Provides specialised response and investigative capacity in relation to more serious or repeat offending, and additional support to affected family members.</li></ul>	<ul style="list-style-type: none"><li>▷ Given the high volume of family violence cases, family violence team members will probably be despatched and be unavailable for other incidents early into any shift.</li><li>▷ Could limit family violence teams' ability to focus on their other functions, undermining the specialisation model.</li><li>▷ Assigning first response to specialists might contribute to family violence continuing to be seen as outside core policing.</li><li>▷ Keeping first response with general duties police is central to underlining family violence as core business and to achieving cultural change; leaving first response to specialists might see family violence continue to be seen as marginal.</li></ul>

The quality assurance role currently performed by family violence teams in terms of reviewing all L17s and identifying opportunities for improving practice is very useful. Once the Support and Safety Hubs are established (as recommended in Chapter 13) it would be useful if the hubs and family violence teams in each area aligned their quality assurance practices to ensure there is active feedback between them.

This should not, however, replace Victoria Police's duty to exercise suitable quality controls in relation to the accuracy and comprehensiveness of risk assessments done using the L17. Arguably, with an active feedback loop, the amount of time family violence teams devote to this task should decrease, allowing the teams to devote more time to perpetrator and victim management and investigations.

## The composition of family violence teams

A more consistent approach to resourcing family violence teams is necessary. As a starting point, family violence teams need a uniform management structure. This should include gazetted positions for all officers in charge of family violence teams and consistent reporting lines.

The Commission heard cogent arguments from police members and the family violence sector in favour of both gazetted and rotational positions in family violence teams. Ultimately, we came to favour a balance of ongoing and fixed-term positions, with a gazetted officer in charge and a core of other staff, along with a number of rotational positions. Such an approach will achieve a number of things:

- ▷ provide a secure pathway for police members and employees who wish to pursue a career in family violence policing
- ▷ ensure that there is a critical mass of ongoing staff who have highly specialised knowledge and can develop strong networks with local service systems
- ▷ provide continuity and stability to partner organisations
- ▷ enable general duties members to increase their skills and capabilities in family violence policing through a placement in a family violence team
- ▷ provide incentives for police members to gain experience in family violence policing—for example by favouring those who have taken a placement in a family violence team (and performed well) in promotional opportunities, including detective training.

### **Resourcing family violence teams**

The Commission considered whether Family Violence Command should determine the size and composition of each family violence team and the resources made available to it on the basis of relevant family violence rates and other determinants of demand, such as peak incident times.

Responding to family violence is ultimately a regional and divisional responsibility, and local managers will want to retain flexibility to deploy resources to best meet local needs and balance competing priorities. This will also promote a collective responsibility for performance in the field of family violence, rather than it being viewed as the responsibility of the family violence team alone.

As a matter of principle, however, the Commission considers that, to ensure that regions and divisions focus adequate resources on specialist family violence roles, resourcing for these roles should be allocated separately from resourcing for general duties policing. This will provide a measure of consistency in service levels throughout the state.

One way to achieve this would be for Family Violence Command to stipulate a minimum number and type of personnel required to fulfil the core functions for the baseline model of a family violence team. The regions could then have the flexibility to dedicate further personnel and resources to the teams on a planned basis, as local circumstances require. In practice this would mean that each of the roles in the baseline team model could be filled in the way the region thinks best. We refer to this as Option A.

Alternatively, specialist resourcing levels could be set centrally, in keeping with a formula drawing on advice from Family Violence Command on baseline operating models and requirements to achieve relevant quantitative and qualitative performance outcomes. This would also need to take into account variables such as population, demographic and geographic characteristics, and existing and projected demand levels (including unmet demand and an estimate of latent demand). The Commission understand this would put family violence on a footing similar to that of road policing, another area where the challenges of volume, seriousness and complexity of impact intersect. Under this model decisions about how many roles need to be on rotation, how many are gazetted and other resourcing, would be centrally determined. We refer to this model as Option B.

It is the Commission's view that, by calling on Family Violence Command's expertise and combining this with the authority of the Chief Commissioner to determine overall resourcing, the right balance is struck between the autonomy of the regions and the reform required to entrench a suitable level of specialisation. The Commission recognises, however, that moving to a more centralised model of resource allocation would be a major step for Victoria Police and one that brings with it some challenges. Accordingly, the Commission prefers a phased approach—with Option A beginning immediately and Option B to follow.

Providing this direction, and holding regions and divisions accountable against a more comprehensive set of performance targets and measures—which could include, for example, the proportion of high-risk matters managed by family violence teams and recidivism rates for perpetrators managed by the teams—will provide a transparent and flexible mechanism for ensuring that adequate resources are devoted to family violence teams.

The Commission expects that family violence teams will need to increase in size to fulfil their functions and meet desired service standards. Resourcing is discussed shortly, in the section entitled ‘Enablers of an effective police response’.

## Recommendation 50

Victoria Police’s Family Violence Command develop a core set of functions to be delivered by all family violence teams across Victoria. This should form the operating model for resourcing decisions from 1 July 2017. Thereafter, Victoria Police should move towards a centralised model of resource allocation for family violence, placing family violence on a footing similar to that of road policing.

## Recommendation 51

Victoria Police’s Family Violence Command evaluate current localised models for family violence teams and from 1 July 2017 roll out preferable operating models in areas with similar family violence incident patterns.

## Managing recidivist and high-risk perpetrators

Responding to recidivist perpetrators accounts for the bulk of family violence incidents attended by police. These offenders cause significant and ongoing harm to victims—and reducing recidivism will help keep women and children safe and pave the way for recovery. It will also, over time, reduce demand (or the growth in demand) for police services.

The Commission cautions, however, that a stronger focus on recidivist offenders must occur in tandem with—not at the expense of—managing high-risk perpetrators. Access to an escalated police response needs to be based on risk of future harm, with a threshold number of police attendances providing only one indicator of risk. As noted in the Code of Practice, and drawing on what we heard about patterns of violence, a victim who has not previously reported to police might have been exposed to significant or repeated abuse. The Commission takes this view with the following in mind:

- ▷ Risk assessment by police is incident-based, yet risk is dynamic. The actions of the perpetrator beyond the incident to which the police have been called might be equally serious or more serious.
- ▷ Harm is cumulative and not always physical.
- ▷ In view of under-reporting and the dynamics of family violence, solely focusing on recidivism as currently defined might further disadvantage population groups who face structural and cultural barriers to reporting incidents.

## **Developing a better understanding of recidivism**

Victoria Police requires a clear strategy for addressing recidivist and high-risk perpetrators. As a threshold matter, Victoria Police and other justice agencies need to develop a better understanding of patterns of offending and the characteristics of recidivist family violence perpetrators in order to design effective policy and operational responses and allocate resources efficiently.

Research on recidivism is difficult to do because of low reporting rates and limitations with the data on reported family violence incidents. Apart from the Crime Statistics Agency's analysis of Victoria Police data conducted for the Commission, there is at present no publicly available information about the levels of family violence recidivism or the characteristics and behaviours of perpetrators over time in Victoria.<sup>293</sup> The Commission considers that Victoria Police should take the opportunity to build on the momentum generated by the Crime Statistics Agency's work.

The Crime Statistics Agency made a number of suggestions for further research in this regard—for example, incorporating Corrections Victoria and court data to improve the modelling associated with recidivism; statistical analysis to determine whether the serious recidivists (those recorded for five or more family violence incidents between 2004–05 and 2013–14) are 'significantly different' from other perpetrators; analysis of the family violence histories and characteristics of those who commit very serious family violence incidents; and analysis of the relationships between perpetrators' family violence incidents and other recorded offences.<sup>294</sup> The Commission supports these suggestions.

Family Violence Command also needs to provide further guidance on effective strategies for dealing with recidivism. This process will need to be evidence led and adaptive, drawing on the evaluation of current initiatives, research and practice wisdom. Local innovation should continue to be encouraged, but with parameters set by Family Violence Command to ensure monitoring, evaluation and dissemination of good practice. The goal should be consistent service outcomes throughout the state.

## **Responsibility for managing recidivist and high-risk perpetrators**

The Commission stresses the importance of Victoria Police tasking and coordination processes, at all levels, giving appropriate attention to the identification and management of high-risk and recidivist family violence offenders.

Tasking and coordination is a difficult process, requiring the allocation and constant re-assessment of finite resources across disparate threats to community safety. Due weight must, however, be given to the harm caused and threatened by family violence. Implementation of the Commission's recommendation for a more meaningful and clearly defined set of family violence performance indicators will ensure that family violence harm is treated on the same footing as the harm caused by other crime types and threats to community safety. The expectation is that accountability against improved performance measures will sharpen the focus on recidivism and family violence at tasking and coordination meetings.

The Commission also expects that this will result in more resources being devoted to the management of recidivist and high-risk family violence perpetrators and support to victims of repeat violence.

As noted, a central function of family violence teams should be the management of high-risk and recidivist perpetrators and the provision of support to victims of repeat violence. But responsibility for managing recidivist family violence perpetrators must not fall to family violence teams alone: demand and the circumstances of particular cases, will require that this responsibility be shared by investigative response units, general duties members and others.

Close working relationships with the specialist family violence sector and other services will remain crucial to reducing recidivism and repeat victimisation. The Commission agrees with the view put by Senior Sergeant Alexander—that police cannot change recidivism on their own. Engagement with services is necessary to tackle the risk factors that under-lie recidivist behaviour and make women and children vulnerable to repeat victimisation.

## Criminal investigations: increasing responsibility and capacity

Effective criminal investigations and prosecutions are vital to holding perpetrators account able for their actions and to keeping victims safe.

On the evidence provided, the Commission is satisfied that Victoria Police has improved its practice in terms of investigation and prosecution of family violence offences. This is evident in the report of the Sentencing Advisory Council who reported that from 2009–10 to 2014–15 the percentage of police-recorded family violence incidents where charges were laid increased from 22.3 per cent ( $n=7944$ ) in 2009–10 to 38.2 per cent ( $n=27,058$ ) in 2014–15. This increase in the number of criminal charges demonstrates that police now view, or are increasingly viewing, family violence as a crime, not a private matter. This has involved a significant increase in investigative effort, especially given the double-digit growth in the number of family violence incident reports between 2009–10 and 2013–14.

The Commission is also satisfied, however, on the evidence provided, that the quality of criminal investigations of family violence incidents should be improved. Criminal investigations are often left to general duties police even when policy requires the involvement of specialist investigators. As discussed in Chapter 14, the Commission was also informed that general duties officers can be reluctant to lay charges when confronted with ‘minor’ contraventions of intervention orders.

The new family violence operating model will need to clearly express where investigative responsibilities lie for family violence offences. This should broadly correlate with the current approach, whereby the police investigative response is calibrated to the seriousness of the offence. Nevertheless, the Commission recommends a number of actions to strengthen the investigation of family violence offences.

In keeping with the greater emphasis to be placed on family violence in tasking and coordination, the Commission considers that Victoria Police (Family Violence Command and the Intelligence and Covert Support Department) should review the level of specialist intelligence resources focused on supporting the response to family violence. Once intelligence support needs are identified, consideration should then be given to whether the Victoria Police Intelligence Doctrine needs to be updated to reflect the specific nature and challenges of family violence policing.

General duties police will continue to be responsible for investigating and prosecuting the majority of family violence offences. To continue the upward trend in charge rates, police training and supervision should highlight the importance of laying charges wherever the evidence allows it. Specific training or guidance in investigative techniques should be considered for breaches committed by electronic means, which the Commission understands have been met with inconsistent responses.

As part of their leadership, education and quality assurance functions, specialist family violence positions and family violence teams should encourage general duties members to identify and prosecute all breaches and substantive offences against the person and property—including, for example, financial abuse.

Taking this a step further, Victoria Police should also consider expanding the Dandenong pro-arrest policy to other divisions, along with the fast-tracking of criminal matters. This should, however, occur only after these initiatives have been evaluated and the effect on police resources considered. In particular, any pro-arrest initiatives must guard against re-victimisation resulting from incorrectly identifying the primary aggressor.

The investigative capability of family violence teams also needs to be enhanced. This will allow family violence teams to retain responsibility for more complex criminal investigations and will also raise the profile, status and attractiveness of the teams across the organisation.

The Commission received a number of suggestions for achieving this but, in view of the significant operational, industrial and funding implications of these approaches, it decided that Victoria Police should determine the best approach. The Commission is, however, attracted to the following proposals:

- ▷ embedding detectives in family violence teams, on a portfolio basis at first followed by gazetted positions if the model proves successful
- ▷ increasing the investigative capability of family violence team members by providing access to the field investigators' course, along with training in 'whole-story' investigative techniques
- ▷ providing greater intelligence support to family violence teams, in keeping with their enhanced investigative responsibilities and other functions.

The Commission also considers that greater emphasis needs to be placed on ensuring that investigation and response units are discharging their responsibilities in connection with family violence-related investigations, in compliance with the requirements of the Code of Practice and the Victoria Police Manual. This can be achieved through the development and monitoring of relevant performance measures and targets or through audit processes overseen by Family Violence Command.

## Recommendation 52

Victoria Police develop a model to strengthen the investigation of family violence offences and focus additional specialist investigative and intelligence resources on serious family violence offending [within 12 months]. Victoria Police should develop performance measures for the revised approach, against which it reports annually and publicly. To improve the investigation of family violence, Victoria Police should:

- ▷ embed investigators in family violence teams where appropriate
- ▷ ensure that investigation and response teams take on or actively oversee investigations
- ▷ give tactical and divisional intelligence support to family violence teams
- ▷ give family violence team members access to the field investigator's course
- ▷ equip first responders with technology that will facilitate timely on-site evidence capture
- ▷ ensure that family violence advisors are involved with divisional tasking and coordination committees and that advisors are of an appropriate rank to participate effectively.

## Recommendation 53

The Chief Commissioner of Police report in the Victoria Police annual report on the revised model(s) for and progress in strengthening the investigation of family violence offences.

## Enablers of an effective police response

Sustaining the improvements that Victoria Police has made in the past decade requires generating efficiencies and improving effectiveness. This will release members' time to focus on useful interventions with victims, perpetrators and vulnerable families in compliance with the Code of Practice.

The Commission identified a number of options for increasing Victoria Police's capacity to respond to family violence. Although these options are not mutually exclusive, each carries with it unique resourcing requirements and implications for policy and operational design. The options identified are:

- ▷ changing the priorities for police resources
- ▷ reducing demand through a stronger focus on recidivist offenders
- ▷ making changes to police powers, functions and procedures to lighten workloads for police
- ▷ making efficiency gains through improved training, streamlined administrative arrangements and information technology improvements.

### Police resources

Adequate resourcing for Victoria Police is essential to ensuring that women and their children are safe and perpetrators are held to account.

A range of parties informed the Commission that front-line police are struggling to keep up with the demand to respond to family violence. The Commission considers that resources must be focused on family violence policing to ensure the sustainability of recent gains and to give the reforms it recommends every opportunity for success. This can be achieved in a number of ways.

The already high demand for services will probably continue to escalate as the systemic response to family violence continues to improve and victims become more confident about coming forward and reporting abuse. Police members also need to devote more time to responding to family violence incidents, to ensure that service standards are consistently in line with the Code of Practice. The improved supervision and compliance arrangements the Commission recommends are directed to this objective.

The Commission also notes that a number of other recommendations will, directly or indirectly, place further demands on police resources. Victoria Police can meet these additional resourcing requirements in a range of ways:

- ▷ through internal reprioritisation
- ▷ through efficiency gains that allow re-investment of savings into family violence policing
- ▷ through additional appropriations.

As noted, family violence resourcing levels for front-line and operational positions are set at the regional and divisional levels. There is, however, variability in the priority regions and divisions accorded to family violence. Bringing all areas up to best-practice standard would result in an increase in organisational effort and resources focused on family violence.

More work needs to be done to ensure that, in all police regions and divisions, the resources allocated to family violence reflect its seriousness as a public safety concern, and its impacts on individual victims and their children. In the past decade Victoria Police has re-prioritised significant resources so as to expand its capacity to respond to family violence. Further, an increased focus on family violence at the regional and divisional levels would probably affect the resources available for other crime types and public safety problems. Efficiency gains and appropriations will therefore form an important part of the resourcing mix in the future.

The Commission identified a number of potential efficiency gains that could release police time and resources to focus on family violence:

- ▷ an enhanced IT environment to reduce the administrative burden and improve operational efficiency
- ▷ changes to family violence intervention order service requirements and methodologies, to reduce the police workload associated with personal service of documents
- ▷ greater support for front-line police from specialist family violence roles and teams
- ▷ more effective management of high-risk and recidivist offenders through an enhanced specialist response, improved compliance with the Code of Practice and Victoria Police Intelligence Doctrine, increased investigative capacity, and greater use of multi-agency collaborative approaches (including fast-track and pro-arrest approaches).

These measures should be viewed in the context of the broader recommendations put forward in this report, which aim to deliver a better resourced family violence system that is more effective in preventing family violence and intervening early to prevent its escalation.

The efficiency and demand-reduction gains associated with police-specific initiatives and others will take time to realise, while the cost of implementing the Commission's recommendations will be felt in the short term. Victoria Police re-prioritisation opportunities and efficiency gains, once calculated, might also fall short of what is required to implement the Commission's recommendations and deliver consistently high-quality services that meet relevant performance measures.

The Commission considers that any additional investment to support a more intensive police response to family violence—if designed and implemented well and linked to improved service and performance levels—will deliver considerable future social and economic benefits to the Victorian community by reducing family violence levels. Victoria Police and the Victorian Government will need to take these matters into account in determining a sustainable basis for resourcing the police response to family violence and implementing the Commission's recommendations.

### **Enhanced information technology**

IT enhancements could greatly increase the efficiency and effectiveness of the L17 process and other elements of family violence policing. More generally, a refreshed IT environment would reduce the demands of administrative tasks on operational police and increase their capacity to respond to family violence.

In the short term, the Victoria Police should upgrade the LEDR Mk II system to address problems such as those identified in The Police Association Victoria's submission. System enhancements should be assigned priority following a cost-benefit analysis.

In the medium to longer term, Victoria Police should roll out mobile devices and applications to allow police members to obtain the information they need in the field for conducting a thorough risk assessment, and completing the L17 onsite at an incident. A mobile solution would also streamline procedures for seeking approval of and issuing family violence safety notices and enable efficient, effective service of warrants.

Realising the Blue Paper's vision for technology-enhanced policing will also provide the infrastructure for enhanced information sharing with partner agencies, improving the quality of responses for all agencies in the integrated family violence system.

## Recommendation 54

The Victorian Government and Victoria Police deploy mobile technology for police members, including capability to use the Law Enforcement Assistance Program (LEAP), complete and despatch police referrals (L17 forms), take victim and witness statements and process and issue family violence safety notices in the field—recognising that this is contingent on the adequacy of Victoria Police's broader IT environment [within three years].

### Reducing the administrative burden

Legislative and administrative changes should be made in relation to the personal service of applications for FVIOs and FVIOs, to increase victim's safety and to allow Victoria Police members to spend more time on higher value policing activities.

The Commission shares Victoria Police's concern about the potential for respondents to deliberately avoid service of applications and orders. This can jeopardise victims' safety and welfare by enabling respondents to continue engaging in abusive or intimidatory behaviour without criminal sanction. The increasing use of family violence safety notices by police extends civil protection provided to victims, since the safety notice has effect until a family violence intervention order is served. But, safety notices are not available or appropriate in many cases, and it remains important to minimise the chance that respondents will avoid service.

The requirement to personally serve applications and FVIOs places major and growing demands on Victoria Police resources. Furthermore, Victoria Police applications for substituted service are creating an increased workload for the Magistrates' Court. It is therefore important for service and other procedural obligations to be as streamlined as possible to ensure police and court time is spent protecting and supporting victims and holding perpetrators to account.

At the same time, service arrangements must engender a high degree of confidence that an individual respondent is made aware of any FVIO made against them and, if so, of the restrictions it places on their conduct and the consequences for breaching the order. This is important for fairness and efficacy, since respondents are unable to comply with, and cannot be held criminally responsible for obligations of which they are unaware.

Family violence intervention orders should be personally served on respondents and protected persons. Personal service provides a high level of assurance that the respondent will be made aware of the order, promoting compliance, accountability and the safety of the protected person. Personal service also provides a further opportunity for the state to impress on the respondent the seriousness of the situation and that they will continue to be held accountable for their behaviour. The Commission considers this particularly important in higher-risk cases.

There might, however, be cases where personal service by police is not necessary to ensure the respondent is aware of the order. In lower-risk cases police might be able to satisfy a magistrate that service can be effected by other means (for example, by email or registered post) and service by the alternative means proposed will not materially diminish the safety of the protected person or dilute the accountability of the respondent.

In addition, where personal service is required, that service could in suitable cases, be effected by an entity other than Victoria Police—for example, the sheriff or private process servers engaged by the court or Court Services Victoria. Including this in the suite of alternative service methods would depend on an assessment of:

- ▷ any safety considerations for process servers and/or sheriff's officers
- ▷ the cost-effectiveness of this model
- ▷ the effect of this model on prompt and accurate information sharing — for example, to allow prompt recording on LEAP and notification of the police informant that service has been effected.

There is also a need to improve police practice in relation to personal service of family violence intervention orders.

As a first step, the Code of Practice and the Victoria Police Manual should be amended to provide both greater emphasis and greater guidance in relation to the service of FVIOs. The Code should emphasise that service is essential to the integrity of FVIOs, and it should set out clear expectations in relation to the following:

- ▷ actions that should be taken to effect service of family violence intervention orders
- ▷ time lines within which such actions should be taken
- ▷ escalation requirements, commensurate with levels of risk, where attempts to serve family violence intervention orders have been unsuccessful
- ▷ responsibilities for undertaking, and for supervising, the activities just outlined
- ▷ explanatory and training material on the amended Code of Practice should also include a refresher on law and procedure relating to service.

It is the Commission's expectation that compliance with the revised procedures for service will be monitored by police supervisors with the same rigour as compliance with L17 requirements. Family violence liaison officers or family violence teams should have an oversight function in terms of monitoring risk levels associated with unserved family violence intervention orders in their operational catchment areas, reporting on compliance with the Code of Practice, and dealing with individual and systemic concerns. Consideration should also be given to using family violence teams as a point of reference and advice for general duties police who are experiencing difficulties in locating a respondent or otherwise effecting service and to take over responsibility for the personal service of certain family violence intervention orders—for example, in high-risk cases where the inability to serve the FVIO creates safety concerns.

## Recommendation 55

In order to improve the supervision of the service of family violence intervention orders, Victoria Police [within 12 months]:

- ▷ amend the Victoria Police Manual and Code of Practice for the Investigation of Family Violence to provide clearer guidance on and increased supervision of service of family violence intervention orders
- ▷ establish procedures for giving priority to the service of family violence intervention orders on high-risk perpetrators or those suspected of avoiding service—including tasking family violence teams to effect service or seeking relevant court orders, or both
- ▷ provide training at all appropriate levels on the amended requirements relating to service of orders
- ▷ regularly and publicly report on performance in the service of family violence intervention orders.

## Recommendation 56

- ▷ The Victorian Government—working with Victoria Police, the courts and other relevant stakeholders—trial and evaluate the use of agencies or service providers other than Victoria Police to effect personal service of applications for family violence intervention orders [within two years].

## Recommendation 57

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to extend the ability of the Magistrates' Court of Victoria and the Children's Court of Victoria to order service of applications for family violence intervention orders and orders in the first instance other than by personal service, if the court is satisfied that alternative service:

- ▷ is likely to be effective
- ▷ will not result in an unacceptable risk to the safety of the protected person or any other person
- ▷ is, in all the circumstances, appropriate [within 12 months].

## Police powers

The Commission received evidence about a number of potential changes to police powers and procedural requirements. The primary purpose of any such changes should be to improve the effectiveness of the police response to family violence and enhance the safety and support provided to victims; changes might, however, provide efficiency gains that free up police time for direct service delivery.

### Body-worn cameras

Body-worn cameras have recently been deployed in New South Wales but have not yet been evaluated. Overseas studies show some benefits associated with their use and have also identified some challenges. The Commission considers that body-worn cameras potentially offer a number of benefits

- ▷ for victims—by reducing the trauma associated with giving evidence in court
- ▷ for police—by assisting with investigations and encouraging guilty pleas in appropriate cases
- ▷ for prosecutors and courts—by providing higher-quality evidence that might increase guilty pleas where appropriate
- ▷ for the community—who may have greater confidence that offenders are being held to account.

The Commission is concerned, however, about potential unintended consequences—in particular for victims—and therefore considers it imperative that body-worn cameras be subject to a rigorous trial and evaluation. A well-designed and evaluated trial will allow the benefits of the cameras to be assessed, and potential risks to be identified and managed. Such a trial does not need to be statewide: a more prudent course would be to limit it to specific geographic areas.

The trial should monitor whether video footage from the scene is used against victims, either undermining their credibility or being directly used against them. This is of particular concern given the uncertainties associated with identifying the primary aggressor, as discussed in Chapter 14. The Commission therefore considers that a precondition for the use of body-worn cameras is to train police in the nature and dynamics of family violence and identifying the primary aggressor, rather than focusing training on the use of the technology. Simply teaching police how to turn on the technology is not sufficient. They must also be aware of the need to avoid re-victimisation by pressuring the victim to give an immediate statement on camera and to conduct an assessment to ascertain whether, by using the camera, the victim is placed at further risk.

The Commission is also concerned about the potential use of video evidence to coerce victims in participating in prosecutions against their will. It agrees with Victoria Police's submission that there could be sound reasons why victims do not want to prosecute the perpetrator. The risk of coercion will be minimised by requiring the ongoing consent of the victim to use the evidence in court.

Project governance arrangements should include representatives from family violence services so that victims' voices are taken into account when developing the body-worn camera trial and its evaluation. The trial should also be designed to maximise efficiency gains for police and the administration of justice more generally. This will be important to test, given the mixed results in overseas jurisdictions.

Among the questions the trial should seek to resolve are the following:

- ▷ Will evidence from body-worn cameras be available for use in criminal matters only, or will it be available for family violence intervention order applications too (or a subset thereof)?
- ▷ How will body-worn cameras be integrated with the Victoria Police IT and security environment?
- ▷ What will be the downstream effects for police prosecutors, the Office of Public Prosecutions and the courts?
- ▷ Are victims' experiences improved?
- ▷ Does the quality of evidence improve?

More broadly, the evaluation should seek to determine whether body-worn cameras can lead to more efficient administration of justice while avoiding any of the potential concerns or unintended consequences. It should canvass the views of victims, police, the courts and others such as the family violence sector and legal stakeholders.

## Recommendation 58

Victoria Police conduct a trial in two divisions of the use of body-worn cameras to collect statements and other evidence from family violence incident scenes [within 12 months]. The trial should be supported by any necessary legislative amendment to ensure the admissibility of evidence collected in criminal and civil proceedings. It should also be subject to a legislative sunset period, evaluation and the use of any evidence only with the victim's consent.

### Police-issued family violence intervention orders

The Commission does not support the introduction of police-issued family violence intervention orders at this time. It does, however, recommend that the Victorian Government reconsider this matter within five years, once the effect of the Commission's broader recommendations is known.

In ordinary circumstances, the Commission would have dismissed the proposal for police-issued FVIOs as a matter of legal principle. These orders can impose significant restrictions on individual rights and liberties, including exclusion from one's place of residence, restrictions on freedom of movement and association, and requirements to attend programs. In our legal culture, such restrictions on individual rights and liberties should be imposed only through the exercise of judicial power. It is important to note that any party to an FVIO can make an application to have it varied or revoked.

Because of the scale of family violence and the urgency of the task to develop a better response to it, however, the Commission carefully considered the benefits and risks of police-issued family violence orders, as summarised in Table 15.10.

Table 15.10 Benefits and risks associated with police-issued family violence orders

Benefits	Risks
<ul style="list-style-type: none"> <li>▷ Improved experience for victims, who receive the immediate protection of an intervention order and are spared the need to go to court, which can be both re-traumatising and disruptive, especially if the respondent does not attend.</li> <li>▷ The immediacy of the order may have a stronger deterrent effect on respondents and allow police to take prompt action if a breach occurs.</li> <li>▷ Alleviates gaps in civil protection caused when police cannot locate respondents to personally serve final orders.</li> <li>▷ Will reduce demand for intervention orders in magistrates' courts, freeing up capacity to, for example, provide greater judicial oversight of perpetrators and more allowing time to consider contested or high-risk matters.</li> <li>▷ Will have a net reduction on police workloads (less time preparing for court and serving orders), allowing resources to be re-focused on other public safety priorities (including family violence recidivists).</li> <li>▷ May improve the overall police response, since power to issue orders would need to be accompanied by additional training and a stronger focus on investigation to fully understand circumstances.</li> <li>▷ Makes practical sense since many intervention orders are made by consent.</li> </ul>	<ul style="list-style-type: none"> <li>▷ Police-issued orders may have less of a deterrent effect on perpetrators than orders imposed by a magistrate in court. This could lead to more breaches and diminished victim and community safety.</li> <li>▷ Some other benefits of court appearance would be lost, such as victims' and perpetrators' access to court-based legal and support workers. It would also be difficult for police to require perpetrators to attend necessary programs, and to determine which programs were suitable.</li> <li>▷ May lead to a significant number of variation or revocation applications, offsetting any potential efficiency gains for police and courts.</li> <li>▷ May result in poorly tailored or targeted orders, as front-line police are unlikely to have the time, training or information available to thoroughly assess the situation.</li> <li>▷ Burdens front-line police, who often have limited experience, with the responsibility of assessing the situation and gauging appropriate legal response (and bearing any consequences if the response fails to prevent future harm).</li> <li>▷ Risk aversion may see a default position of restrictive intervention orders.</li> <li>▷ Respondents may not understand the conditions of the order, causing breaches—with a potentially disproportionate effect on certain population groups such as culturally and linguistically diverse communities, Aboriginal communities and people with disability.</li> <li>▷ Respondents may not understand or have the wherewithal to act on their right to seek a court variation.</li> <li>▷ Likely to require significant, 'upskilling' of police, with upfront and ongoing resourcing implications.</li> <li>▷ Arguably unfair as it imposes serious restrictions on the alleged perpetrator without the benefit of legal advice and the opportunity to test allegations in court.</li> <li>▷ Would accord unprecedented power to police members to administratively impose significant restrictions on liberties. Legal principle supports such restrictions being imposed through the exercise of judicial power only.</li> </ul>

A central argument in favour of police-issued FVIOs is victims' varied and often poor experience of the court system. The Commission was advised that attending court can be re-traumatising and disruptive for victims; that in any event most orders are made by consent; and that the experience of many victims does not correspond with the supposed benefits—for example, the opportunity to engage with legal services might mean a hurried conversation in a public area before the matter is called; the knowledge and gravitas of the judiciary might equate to the momentary attention of a magistrate managing a busy list; and links to services might mean a referral to an overstretched service provider.

Elsewhere in this report, the Commission makes recommendations aimed at improving the court experience. This includes expanding specialist family violence courts, streamlining registry administrative processes to allow a greater focus on client management, and measures to reduce adjournments, manage list sizes, and to make it easier to give evidence remotely. It would be premature to radically reform the system by allowing police-issued FVIOs before the effect of these recommendations can be assessed.

In particular, the Commission is concerned about the evidence relating to inconsistent service quality. We heard evidence of cultural and attitudinal problems within Victoria Police, limited understanding among some police members of the nature and dynamics of family violence, difficulties in undertaking risk assessments and incorrectly identifying the primary aggressor, and concerns about police engagement with marginalised groups. The Commission considers that police capability and the quality and consistency of the police response to family violence need time to improve before police-issued FVIOs can be more fully considered.

These improvements could be effected through some of the other recommendations the Commission makes, and its concerns about the fair and effective administration of a police-issued FVIO scheme could be reduced when these recommendations are implemented successfully.

Despite the risks identified above, the Commission recognises that a police-issued FVIO scheme—administered fairly, safely and effectively—could free up police and court resources. It therefore proposes that the Victorian Government revisit this matter after five years, noting the Commission’s recommendation that all FVIO applications be heard in headquarter magistrates’ courts in five years time, and provided the following circumstances still apply:

- ▷ Demand continues to stretch the capacity of police and the courts to respond to family violence.
- ▷ There is an actuarial risk assessment tool contained within the revised CRAF that can accurately and consistently distinguish between cases that can be safely and appropriately dealt with by police-issued FVIOs and those that, owing to their risk and complexity, require a court response.
- ▷ Police capacity to respond to family violence and deliver consistently high service standards has comprehensively and demonstrably improved.
- ▷ The family violence system can engage with victims and perpetrators to ensure they are supported, understand their legal rights and obligations, have their broader health and human services needs met, and that the perpetrator is kept in view.
- ▷ The court experience for victims is problematic.

The Commission also proposes that any future police-issued family violence intervention order system must include the following safeguards:

- ▷ Police-issued FVIOs cannot be made in high-risk cases or where police have reason to suspect that a party is aged under 17 years or less, has a cognitive impairment, is drug or alcohol affected, or for any other reason is unlikely to understand the nature or effect of the order—for example, because an interpreter is not available.
- ▷ The issuing police member has no reasonable grounds for suspecting that a *Family Law Act 1975* (Cth) order, child protection order or community correction order is in place that could be inconsistent with the FVIO that the police member intends to make.
- ▷ Implementation is preceded by comprehensive training in relation to issuing FVIOs, and only police members who have completed the training are authorised to issue the orders.
- ▷ An officer of the rank of senior sergeant or above must make the FVIO on application by the police member in the field and on hearing from the victim and, if practicable, the perpetrator.
- ▷ A family violence team must review the circumstances in which each police-issued FVIO is made and provide advice on its appropriateness to an officer of the rank of inspector or above, who must review the order and confirm it has been appropriately issued within three days.

- ▷ On serving a police-issued FVIO a police member must explain the nature, effect and consequences of a breach of the order and the parties' rights to opt out of this process and have the matter heard in court. They must also provide a written notice outlining this information (using an interpreter where required), along with contact numbers for legal advice and other support services.
- ▷ On serving a police-issued FVIO a police member must explain the further contact and support that parties will receive from both police and the broader service system in the foreseeable future, and must also provide a written notice outlining this information (in the appropriate community language).
- ▷ Legislation implementing the scheme should contain a sunset clause, along with a statutory requirement for an independent evaluation to be conducted within two years and the report of the evaluation to be tabled in parliament.
- ▷ A project board with membership from across government and key non-government stakeholders should closely monitor the scheme to ensure that it is administered fairly, safely and effectively, is aligned with its objectives and that no unintended consequences are evident.

## Recommendation 59

The Victorian Government consider [after five years] whether Victoria Police should be given the power to issue family violence intervention orders in the field, subject to the recommended Statewide Family Violence Advisory Committee and Family Violence Agency advising that Victoria Police has made significant improvements to its response to family violence, taking into account the Commission's recommendations.

## Endnotes

- 1 Victoria Police, 'Blue Paper: A Vision for Victoria Police in 2025' (2014) 6, 23–24.
- 2 Victoria Police, 'Corporate Plan 2015–18—Year 1' (2015) 3, 13.
- 3 Victoria Police, 'Living Free From Violence—Upholding The Right: Victoria Police Strategy to Reduce Violence Against Women and Children 2009–2014' (November 2009) iii, iv, v.
- 4 See generally Victoria Police, 'Future Directions for Victim-Centric Policing' (August 2015).
- 5 Victoria Police, *About Victoria Police* (4 November 2015) <[http://www.police.vic.gov.au/content.asp?Document\\_ID=309](http://www.police.vic.gov.au/content.asp?Document_ID=309)>.
- 6 See Victoria Police, *Victoria Police Organisational Structure Chart* (November 2015) <[http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media\\_ID=60789](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=60789)>.
- 7 Victoria Police, Submission 923, 38.
- 8 Victoria Police, above n 6.
- 9 Victoria Police, above n 5.
- 10 Victoria Police, 'Enhanced Family Violence Service Delivery—2011–2014' (1 January 2014), 7–8, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 11 Figure is based on the diagram at *ibid* 9.
- 12 Victoria Police, above n 5.
- 13 Statement of McWhirter, 27 July 2015, 9 [38].
- 14 *Ibid* 11–12 [49]–[51].
- 15 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014).
- 16 Statement of Steendam, 9 July 2015, 9–10 [35].
- 17 Statement of McWhirter, 27 July 2015, Attachment 3 (Confidential), 14.
- 18 *Ibid* Attachment 2 (Confidential), 10–11.
- 19 *Ibid*.
- 20 Victoria Police, above n 15, 24.
- 21 *Ibid*.
- 22 Statement of McWhirter, 27 July 2015, Attachment 3 (Confidential), 6; Statement of Steendam, 9 July 2015, 8–9 [32].
- 23 Statement of Steendam, 9 July 2015, 9 [33].
- 24 Statement of McWhirter, 27 July 2015, Attachment 2 (Confidential), 7.
- 25 *Ibid* Attachment 2 (Confidential), 21–23.
- 26 *Ibid* Attachment 2 (Confidential), 23–24.
- 27 See, eg, Transcript of Spriggs, 3 August 2015, 1700 [14]–[20].
- 28 Legislative Council Standing Committee on Social Issues, Parliament of New South Wales, 'Domestic Violence Trends and Issues in NSW' (Report No 46, August 2012) 177.
- 29 Statement of McWhirter, 27 July 2015, 9 [37]–[38].
- 30 Transcript of McWhirter, 3 August 2015, 1656 [12]–[22].
- 31 Statement of McWhirter, 27 July 2015, 11 [49].
- 32 *Ibid* 11–12 [50].
- 33 *Ibid* 12 [51].
- 34 Transcript of Cornelius, 3 August 2015, 1674 [2]–[9].
- 35 During the same period the number of formal referrals made by Victoria Police for female AFMs (victims) increased from 9,530 (2009–10) to 39,772 (2013–14), an increase of 317 per cent; the number of Formal Referrals made by Victoria Police for perpetrators increased from 4,887 (2009–10) to 33,021 (2013–14) an increase of 592 per cent: Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), Victoria Police data source, Tab 31, Table 31: Referrals made by Victoria Police by Region and gender of the affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 36 Crime Statistics Agency, *Family Incidents* (1 December 2015) <<http://www.crimestatistics.vic.gov.au/home/crime+statistics/year+ending+30+june+2015/family+incidents>>.
- 37 *Ibid*.
- 38 Statement of McWhirter, 27 July 2015, 4 [17].
- 39 *Ibid* 5 [21].
- 40 *Ibid* 6 [22].
- 41 Transcript of Cornelius, 3 August 2015, 1667 [13]–[15].
- 42 Victoria Police, 'Modelling of Victoria Police Global Expenditure for Family Violence 2013–14 and 2014–15' (1 December 2015), 1–4; Victoria Police, 'Modelling of Costs' (1 December 2015), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October).
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# 16 Court-based responses to family violence in Victoria

## Introduction

For many victims and perpetrators of family violence, courts are central to their experience of the family violence system. For individuals and organisations supporting victims and perpetrators, the court is often a principal place of work. Courts are sites where inequity and the abuse of power can be redressed; where individual rights to autonomy, safety, dignity and freedom from fear can be protected; and where those who violate society's standards are held to account. When effective, courts can be safe, orderly, accessible places that vindicate and protect those who have experienced family violence and impose swift, certain and appropriate consequences on those who perpetrate that violence.

While many people find their involvement with the court system a source of empowerment and a crucial intervention towards a safer future, many others have negative experiences. The court process can be intimidating, confusing and unsafe. Court users may have inadequate access to support services and face long delays and inappropriate outcomes. The challenges of responding to family violence—in particular, the continuing increase in applications for family violence intervention orders in many magistrates' courts—mean that new approaches to the structure and function of courts need to be tested. These approaches must place the needs of court users above what is familiar and expedient to the court.

This chapter provides an overview of the role of Victorian courts, primarily the Magistrates' Court, in responding to family violence, identifies gaps in current responses, and recommends a way forward. The first section explains how different courts interact directly and indirectly with people affected by family violence.<sup>1</sup> The majority of family violence matters arising in the court system relate to family violence intervention orders, which are most commonly heard in the Magistrates' Court. Intervention orders in the Children's Court are considered in Chapter 10. Family law and the Family Court are discussed in Chapter 24; Child Protection and its relationship to the Children's Court are discussed in Chapter 11. While some of what follows applies to both criminal and civil proceedings, criminal offences and sentencing raise distinct issues which are discussed in more detail in Chapter 17.

The second section of this chapter summarises what the Commission heard from court users and service providers that support them. The submissions the Commission received and the evidence it heard were largely concerned with men's use of violence against women, most commonly in the context of an intimate partnership. Consequently, this section largely reflects the views of women who sought, or on whose behalf the police sought, family violence intervention orders. How the court engages with perpetrators of family violence is also considered in this section. The experiences of members of particular groups—among them children, Victorians of culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander peoples—are noted; the experiences of these groups are explored in more detail in Chapter 26. The role of legal service providers, who are an integral part of the court process, is also discussed.

After reviewing the experience of court users, this chapter looks at the challenges the court system faces—in particular, managing the demand for its services. Some of the current practices of magistrates' courts in managing court lists and communicating within and across courts are discussed, including recent changes in practice in response to increasing demand. The Commission notes that training for members of the judiciary and the broader court workforce in relation to the causes and dynamics of family violence and responding appropriately to both applicants and respondents, was consistently raised in evidence. This issue is considered in more detail in Chapter 40.

The Commission is cognisant that many of the issues raised in evidence relevant to the Magistrates' Court, for example difficulties with IT systems and infrastructure, are also relevant to the County and Supreme Courts. These issues should be addressed across the court system.

In the final section of this chapter the Commission proposes that the Magistrates' Court and the Children's Court move towards a more therapeutic approach to family violence cases. The Commission proposes a way forward in delivering this approach, in particular by expanding specialist family violence courts. The Commission recommends a number of practical and procedural changes to manage demand better so that the court is well placed to adopt a more therapeutic model, including improving list management, and improving court infrastructure to make the court experience safer and more accessible for court users. The Commission further recommends that the time limit for a family violence safety notice to be brought before the court be extended to 14 days.

The Commission notes that an amendment to the *Family Violence Protection Act 2008 (Vic)*, to allow for self-executing family violence intervention orders, is due to come into effect on 1 July 2016. For the reasons expressed in the final section of this chapter, the Commission recommends that this provision be repealed.

This chapter uses some legal terminology—for example, the Commission refers to applicants, respondents, parties to a dispute, affected family members and protected persons. We use these terms to make clear that our comments refer to a specific legal context (most commonly, FVIO proceedings in the Magistrates' Court). In using these terms, we do not seek to diminish or depersonalise victims of family violence, nor do we presume the guilt of respondents, though at certain points comments are directed to respondents who have perpetrated the alleged violence. When using the terms affected family member, protected person or applicant we mean the victim. In using the words respondent or other party, we mean the perpetrator.

The Commission acknowledges the valuable contribution of Dr Karen Gelb, researcher and criminologist, who was commissioned to prepare a report based on her observations of eight magistrates' courts in Victoria.

## Family violence and the courts

Cases involving family violence are heard in many different legal jurisdictions. The following are the main ways in which Victoria's court system responds to family violence:

- ▷ Applications for family violence intervention orders can be heard by the Magistrates' Court.<sup>2</sup> Many of the 53 magistrates' court venues in the State set aside specific days of the week to hear FVIO applications.<sup>3</sup> The Magistrates' Court also has a 24-hour service for considering urgent police-initiated applications.<sup>4</sup>
- ▷ FVIO applications can also be heard by the Children's Court in some situations, including those involving children and young people aged between 10 and 17 years who are respondents in FVIO applications.<sup>5</sup>
- ▷ Contravention of an FVIO is a summary criminal offence and will usually be heard in the Magistrates' or Children's Court.<sup>6</sup> In 2012 additional 'aggravated' contravention offences were added: contravention of an order intending to cause harm or fear for safety, contravention of a family violence safety notice intending to cause harm or fear for safety, and persistent contravention of notices and orders.<sup>7</sup> These offences carry a maximum of five years' imprisonment.<sup>8</sup> Criminal offences relating to family violence are considered in Chapter 17.
- ▷ A range of criminal offences that occur in the context of family violence can be heard by the Magistrates' Court, the Children's Court or the County Court—for example assault and damage to or destruction of property. The Supreme Court hears the most serious criminal cases, including family violence homicides and attempted murder.<sup>9</sup>
- ▷ Child protection proceedings involving allegations of family violence are heard in the Children's Court, which estimated that, in May 2015, 94 per cent of protection applications before the court related directly though not exclusively to family violence.<sup>10</sup> The connection between family violence and child protection proceedings in the Children's Court is discussed in Chapter 11; and adolescents who use violence against family members are discussed in Chapter 23.
- ▷ The Victims of Crime Assistance Tribunal is the primary forum for victims of crime seeking financial assistance. It operates as a division of the Magistrates' Court.<sup>11</sup> Applications for financial assistance can be made by victims of an 'act of violence', including family violence.<sup>12</sup> More information on VOCAT is provided in Chapter 20.

- ▷ Some civil matters in which family violence can be involved—including tenancy, guardianship, employment and debt disputes—are heard by the Victorian Civil and Administrative Tribunal.<sup>13</sup> For example, the Guardianship List at VCAT can consider claims of financial abuse, exploitation, neglect or violence by carers against people with disabilities and older people.<sup>14</sup> The Magistrates' Court also hears a range of civil matters (such as financial disputes and personal injury claims) that can involve family violence.<sup>15</sup> Issues relating to VCAT are considered in Chapters 20 and 21.
- ▷ The Neighbourhood Justice Centre is a multi-jurisdictional court that sits as a magistrates' court, children's court, VCAT and VOCAT and can hear a wide range of matters that involve family violence. The Centre's features include infrastructure to support the safety and wellbeing of parties, and an array of legal and non-legal support services, including employment and drug and alcohol services.<sup>16</sup>

The greatest volume of family violence matters is heard in the Magistrates' Court. This chapter therefore focuses on FVIOs in the Magistrates' Court. As at the date of writing, with the exception of the Melbourne Children's Court, the Children's Court sits at magistrates' court venues in metropolitan and regional locations across Victoria.<sup>17</sup>

## The Magistrates' Court and family violence intervention orders

In 2013–14, the Magistrates' Court finalised 35,147 applications for FVIOs.<sup>18</sup>

An FVIO is an order made by a court that seeks to protect a person from a family member who is using family violence.<sup>19</sup> An FVIO includes conditions to stop the person against whom the order is made (the respondent) from using family violence.<sup>20</sup> If the respondent breaks the conditions of an FVIO the police can charge them with a criminal offence.<sup>21</sup>

An application for an FVIO can be made by the person affected by the violence, by police or, in certain circumstances, another person on the affected family member's behalf.<sup>22</sup> Police-initiated FVIO applications made up about two-thirds of all finalised applications in the Magistrates' Court in 2013–14.<sup>23</sup> A police-initiated FVIO can be made without the affected family member's consent, but an order made without the consent of the affected family member may only contain limited conditions. For example, the order cannot exclude the perpetrator from the home.<sup>24</sup>

If a person needs immediate protection, an application can be made for an interim intervention order.<sup>25</sup> An interim order can be made without the respondent being at court or knowing about the order (though it must be served on them once made).<sup>26</sup> An interim order will usually last until the first court hearing where the respondent has an opportunity to be present.<sup>27</sup> The magistrate may then decide to make a final order or to extend the interim order until the matter is resolved or may refuse the application.<sup>28</sup>

A magistrate can make a final order if the court is satisfied on the balance of probabilities that the respondent has committed family violence against the protected person and is likely to do so again.<sup>29</sup> A magistrate can also make a final order if both sides agree (consent) to the order being made or the respondent has not opposed the order, for example, they did not turn up to the hearing.<sup>30</sup> It is up to the magistrate to decide when a final order ends.<sup>31</sup> If there is no date specified on the order, it only ends if the order is revoked (cancelled) by a magistrate or set aside on appeal.<sup>32</sup> If an FVIO ends and a person still needs protection, an application must be made for a new order.

During the term of an FVIO, an application can be made (including by the person protected by the order, or the respondent) to 'vary' the conditions of the order if, for example, there has been a significant change in circumstances since the order was made. An application can also be made to revoke or extend the FVIO.<sup>33</sup>

A family violence safety notice is a notice issued by the police to protect a person from a family member who is using family violence until an FVIO application can be decided by the court.<sup>34</sup>

## Specialist family violence courts and services

Two magistrates' courts in Victoria, at Ballarat and Heidelberg, have a special Family Violence Court Division.<sup>35</sup> Additional magistrates' courts at Melbourne, Frankston, Sunshine and Werribee are Specialist Family Violence Services courts.<sup>36</sup>

These venues offer a range of services to support parties involved in family violence matters, such as:

- ▷ trained family violence registrars
- ▷ applicant support workers
- ▷ co-located legal and non-legal support services
- ▷ dedicated police prosecutors for police-initiated applications
- ▷ family violence training for magistrates and staff.<sup>37</sup>

In addition, the Ballarat and Heidelberg Family Violence Court Divisions have gazetted magistrates and respondent workers and can mandate participation at men's behaviour change programs when making final FVIOs.<sup>38</sup> They also tend to hear related proceedings (criminal, crime compensation and other civil matters) when hearing FVIO proceedings (though this is sometimes done in other courts, including the Specialist Family Violence Services Courts).<sup>39</sup> The Commission notes that Heidelberg Court has been damaged by flooding and closed since mid-2015. It is expected to reopen in the third quarter of 2016.<sup>40</sup>

Recently some features of the FVCD and SFVS courts have been expanded.<sup>41</sup> First, Frankston and Moorabbin Magistrates' Courts were given the capacity to mandate participation in men's behaviour change programs, and both courts now have family violence registrars and applicant and respondent workers to support that function.<sup>42</sup> More recently, the Magistrates' Court of Victoria received funding to expand placement of family violence registrars and applicant and respondent workers to all headquarter courts where they were not already in place.<sup>43</sup> As of the beginning of 2016, recruitment for these positions is advanced but ongoing. When complete, 13 of 53 magistrates' court venues will have these features.<sup>44</sup>

At date of writing the court was developing best practice guidelines for all magistrates' court support workers.<sup>45</sup>

## Support services at the Magistrates' Court

Many magistrates' courts have support services on site to assist court users, including court users involved in family violence matters. In particular, some magistrates' court venues are equipped with the following:

- ▷ *Court Network*. This is a volunteer service that provides onsite support, information and referrals to individuals in 18 magistrates' courts in Victoria. Court Network volunteers 'walk the floor', offering help to people in court when a need is recognised. They also see clients referred from services outside court.<sup>46</sup>
- ▷ *The Court Integrated Services Program and the CREDIT/Bail Support Program*. These are case-management and referral services for people who are on bail or summons and are accused of a criminal offence. Both seek to help with underlying difficulties experienced by the accused—for example, drug and alcohol misuse, homelessness and health problems.<sup>47</sup>
- ▷ *Co-located family violence services*. These services may provide information, advocacy and referrals for court users. These may be specifically funded for court work or may attend their local magistrates' court as part of their case-management role. These include Berry Street and InTouch Multicultural Centre Against Family Violence.<sup>48</sup>

## The applicant experience

As noted, the submissions the Commission received and the evidence it heard were largely concerned with the experience of women seeking (or the police seeking on their behalf) FVIOs against male respondents as a result of intimate partner violence. This section is therefore structured to reflect the pathway of family violence victims through the court system.

There are a number of steps between applying for an FVIO and a final order being made. The Commission heard that the court process can be fraught with delays, including delays in having the application heard, serving the application on the respondent, and delays in subsequent hearings for a variety of reasons. The Commission also heard that applications made by police, although facilitating streamlined hearings, can be brought too quickly to court, leaving victims little time to prepare for the consequences of an order.

A common theme raised in evidence before the Commission was that applicants do not understand the court process and that support prior to the hearing, and assistance in understanding the conditions of an order, is lacking. Respondents may also have difficulty understanding the court process and orders. Each of these issues is considered in turn below.

### Applying for a family violence intervention order

As discussed above, most applications for an FVIO are made and heard at the Magistrates' Court. FVIO applications involving children, and particularly child respondents, may be heard in the Children's Court.<sup>49</sup> If a party's residence is within a relevant postcode or the alleged violence occurred within a relevant postcode, the matter can be heard in one of the two Family Violence Court Division courts, at Ballarat and Heidelberg.<sup>50</sup> Otherwise, the court decides which venue will hear a matter brought under the Family Violence Protection Act having regard to a range of considerations, including the parties' safety, their capacity to attend court, the availability of family violence services at court and case flow considerations.<sup>51</sup> Appeals of FVIOs are usually heard in the County Court.<sup>52</sup>

As noted above, applications are usually made by the victim, or by police.<sup>53</sup> Police applications are considered further below. FVIO applicants commonly attend a magistrates' court to make their application—sometimes having made an appointment with the registrar. They will fill out an information form and be interviewed by a registrar, who on the basis of the information form, the interview, and any accompanying evidence provided by the applicant, will prepare a summary, which forms the basis of the application.<sup>54</sup>

A number of submissions the Commission received drew attention to the complexity of applying for an intervention order and the lack of support available to victims applying on their own behalf.<sup>55</sup> The information form asks the applicant, among other things, to confirm whether different forms of violence have occurred and what, if any, charges have been laid; to describe the most recent instance, and any previous instances of violence; and to explain why they want or do not want immediate protection.

In its submission the Mallee Family Violence Executive stated:

[T]o apply for a family violence intervention order in Victoria, a person must fill out a 12-page form ... For many applicants, it can be a difficult exercise. The trauma of violent or intimidating behaviour can be debilitating and answering such a comprehensive range of questions in that moment can amplify the problem.<sup>56</sup>

Court Network's Executive Director, Dr Melanie Heenan, observed in her statement to the Commission:

The Information Form is incredibly lengthy ... It is impossible to complete for those women who are illiterate or semi-literate. Even for highly literate people, it is difficult to capture the reasons why they want the order on the form...The Magistrate does have access to the 12 page document, but they are also under time pressure.<sup>57</sup>

The Commission heard that the capacity of registry staff to help applicants complete the form is limited by other demands on their time.<sup>58</sup> Not all registrars have an equal understanding of family violence, and the availability of other court-based services to assist applicants varies.

Some submissions noted that a lack of assistance for applicants in drafting the application and submitting supporting material can complicate FVIO proceedings. The Federation of Community Legal Centres suggested that requests for 'further and better particulars' are made during the FVIO hearing because applicants 'do not know what to focus on or what is relevant, and may omit important information' when making their application.<sup>59</sup> The Law Institute of Victoria reiterated this concern:

[T]he paperwork can be confusing for applicants who are upset or overwhelmed. It is common for allegations to be broad and not particularised, leaving AFMs [affected family members] at risk of worthy cases failing to satisfy a magistrate of relevant matters and respondents unable to properly assess the case against them.<sup>60</sup>

The Commission is aware that during its deliberations the Neighbourhood Justice Centre developed an online FVIO application form. At the time of writing, the form is being extended to further high-volume magistrates' courts in Victoria.<sup>61</sup> Among the features of the form are the following:

- ▷ the capacity for applicants to quickly exit the form (for example if a perpetrator enters the room), which is automatically saved, and can be completed at any time within a month
- ▷ information boxes that provide an explanation of questions on the form
- ▷ notification of registrars when the form is submitted
- ▷ an algorithm that collates the responses into a narrative that can be reviewed by a registrar or magistrate and assigns a 'high risk' classification to the form as necessary.<sup>62</sup>

The Commission also notes that on 25 November 2015 the Magistrates' Court of Victoria, with the support of Victoria Legal Aid, launched a new website for people involved in family violence proceedings. The website provides detailed information for applicants and respondents on what constitutes family violence; how to apply for an FVIO; what parties can expect before, during and after the hearing; and details of relevant support programs. Information about court procedures is presented partly by means of video scenarios.<sup>63</sup>

The Commission's views on these measures, and potential further measures to improve the application process and 'front-end' case management are expressed in 'The way forward' section.

## Initial delays

Some applicants may require immediate protection. If so, an interim FVIO can be made *ex parte* (where only the applicant appears before the court) as soon as possible and, where possible, on the day the application is made.<sup>64</sup>

The Commission's attention was drawn to delays that can occur before an interview with the registrar is secured and/or before the *ex parte* interim hearing takes place. The Commission was told of delays of up to two weeks between the applicant's first visit to court to make an application and the interview with the registrar leading to lodgment of the application.<sup>65</sup>

The Law Council of Australia noted the increased demand for interim orders in its submission:

[I]n many cases it is no longer guaranteed that a person who attends a Magistrates Court, will have their application for an interim order dealt with that same day. In many cases the applicant is asked to make an appointment with court staff, on a later date, at which time they will then complete the application and have the matter heard on an interim basis by a Magistrate. Anecdotally, we understand that appointments are often made a week away from the person's initial attendance at Court in some registries.<sup>66</sup>

Several submissions noted the substantial detrimental effects this initial delay can have for applicants, the most obvious being the immediate, often serious, risk to the applicant's safety and wellbeing.<sup>67</sup> The Law Council submitted:

It is sometimes difficult for a person living in a violent relationship to safely attend Court the first time. They are often subjected to controlling behaviour from their partner who demands to know their whereabouts at all times, or who covertly tracks their movements. Many people are too frightened to call Victoria Police, and prefer to use the ex parte family violence process. However, those people are placed at risk if they attend Court and the Court is not able to assist them that day. They may find it difficult to attend Court again without their partner's knowledge, or they may face an escalation of the violence because their partner discovers their first (unsuccessful) Court attendance.<sup>68</sup>

Some individuals told the Commission that the visit to court had triggered an escalation in the violence against them.<sup>69</sup>

Evidence shows that for women experiencing intimate partner violence, the period immediately before and after separation is a time of heightened risk. It also shows that an individual's level of fear is a reliable indication of their actual level of risk.<sup>70</sup> To the extent that applying for an FVIO might signify a victim's recognition that they are in danger and be a definitive step towards ending or altering a violent relationship, the application period will be a time of heightened risk for the applicant. During this period the victim does not have the protection of an intervention order and might not have had contact with police or specialist services.

Another consequence of this initial delay is that women can face 'the uncertainty of not knowing whether ... an order for their protection (and their children) will be made on a final basis'.<sup>71</sup> That uncertainty means making decisions about housing, employment, parenting and personal safety planning will be more difficult.<sup>72</sup>

One submission the Commission received suggested that, as well as immediate risks, the delay between the incident that led to the application and the lodgment and hearing of the application can lead to the incident's gravity being underestimated:

Unless there are further incidences of family violence between making the appointment and the appointment, there is a danger that the seriousness of the behaviour that initiated the application may be minimized and not be regarded as urgent ...<sup>73</sup>

The Commission explores various means of addressing delay, and improving case, list and demand management in 'The way forward'.

## Serving an application

After an interim order is made the usual next step is a mention hearing, which the respondent can attend.<sup>74</sup> If an interim order is not required the application is directly listed for a first mention.<sup>75</sup>

Before the first mention the respondent must be served with a copy of the application and summons, and the interim order if made. The summons tells the respondent the nature of the claim and when and where to appear in court.<sup>76</sup>

Serving orders, applications, summonses and other court documents on a respondent is not always straightforward and difficulty serving respondents can be a source of delay. The Commission was told this can be a result of difficulty in locating the respondent and a respondent's attempts to evade service.<sup>77</sup> Some submissions reported that delays in the service of applications and interim orders have flow-on effects, delaying not just the first mention but all further hearings.<sup>78</sup>

Delays in the service of orders were noted as an area of concern in the coronial inquest into the death of Luke Batty. In his published findings, the former State Coroner, Judge Ian Gray noted, '[D]elays in serving FVIOs resulted in protective measures for Luke expiring'. Judge Gray recommended that 'all FVIOs be served on the Respondent with priority'.<sup>79</sup>

The role of Victoria Police, whose members are responsible for serving orders, is discussed in Chapter 15.

## Delays between hearings

At the first mention hearing it is open to the respondent to consent to an FVIO without admitting guilt, in which case a final order can be made at this hearing. This is common. Orders made by consent are discussed later in this chapter, under the heading 'Consent orders'.<sup>80</sup>

If a respondent wants to contest an order, the application is usually listed for a directions hearing. If the application continues to be contested at the directions hearing, a contested hearing will usually be scheduled. The court can make an interim FVIO at any stage in the process.<sup>81</sup>

The Commission was informed that further delays can occur between the mention and the directions hearing. Ms Alice Cooney, a former civil advocate at the Melbourne Magistrates' Court, told the Commission that there can be delays of between two to three months between the first mention and a directions hearing.<sup>82</sup> Contested hearings, where necessary, were then often scheduled for about a month after the directions hearing.<sup>83</sup> The Law Council of Australia submitted, '[I]t is not uncommon for final hearings to be listed at least six or more months' after the initial hearing and that the time between the interim order being made and the final hearing in 'some, albeit complex cases ... has exceeded more than a year'.<sup>84</sup>

A November 2014 Resource and Costing Model report produced by the Magistrates' Court of Victoria pursuant to the Commission's request for information noted that the intervention order backlog (for both family violence and personal safety orders) 'has experienced the fastest rate of growth in the Court', 'dampening the timeliness rate and exerting upward pressure on delays'.<sup>85</sup> According to the report, 19 of every 20 intervention orders were finalised within six months (with this proportion remaining relatively stable over time), but there was an increase in the number of matters pending for more than 12 months.<sup>86</sup>

The Magistrates' Court of Victoria *Family Violence Operating Procedures* provide some indication of typical time lines. The procedures state that applications for variation, revocation or extension of an intervention order should ideally be listed within seven to 14 days from the date the application is filed,<sup>87</sup> and that a directions hearing is generally listed for four to six weeks after the mention date.<sup>88</sup>

Improving management of demand, cases and lists is considered in 'The way forward' below.

## Delays caused by respondents

The conduct of respondents can delay proceedings. Delays can be caused by the perpetrators lawful assertion of procedural rights; for example, it is not uncommon for the respondent to seek 'further and better particulars' about the application and to be given the opportunity to consider those particulars. There may need to be an adjournment to allow the applicant to respond to that request.<sup>89</sup>

However, the Commission was informed that there are instances where perpetrators abuse legal processes in order to delay the final hearing or pressure the applicant to withdraw their application. A common example cited is when the respondent applies for their own intervention order (called a 'cross-application') without legitimate reasons.<sup>90</sup>

Many submissions from legal and community support services and individuals remarked on the adverse effects on the victim caused by cross-applications, among them the following:

- ▷ delaying and complicating proceedings (including by initiating proceedings in a different court venue)
- ▷ limiting a victim's readiness to report contraventions of orders for fear they might also be found in contravention
- ▷ imposing an unnecessary onus on victims to defend themselves, their conduct or their version of events
- ▷ limiting victims' access to legal services as a result of conflicts of interest
- ▷ contributing to a misperception that the violence between family members is usually mutual.<sup>91</sup>

The Commission was informed of a 2009 New South Wales study that found that matters involving cross-applications were much more likely than sole applications to result in the withdrawal of the initial application and that women involved viewed the cross-applications as an 'extension of the abuse they were seeking protection from'.<sup>92</sup>

Perpetrators of family violence can also use other delaying tactics. For example, they can fail to appear at hearings,<sup>93</sup> evade service of orders, seek adjournments at short notice, apply for a rehearing in the Magistrates' Court or an appeal in the County Court without good reason, or make false or misleading statements in court.<sup>94</sup> In some criminal family violence proceedings in the Magistrates' Court, they may also have a right to withdraw consent to the Magistrates' Court's jurisdiction (requiring the matter to be heard at a higher court) at a late stage, delaying their trial.<sup>95</sup>

The Commission heard that in some cases, these tactics are part of the violence perpetrated against the victim and are calculated to terrorise, disempower, humiliate and undermine the victim's attempts to protect herself (or himself) and other family members. In its submission, Women's Legal Service Victoria explained the distinction between legitimate litigation practices and abuse of process:

Procedural fairness is a key component of the family violence jurisdiction. We recognise that appropriate mechanisms must be available in the intervention order process for perpetrators to challenge allegations of family violence, make cross-applications and seek review of judicial decisions. There is, however, a category of cases where court mechanisms are abused by the perpetrator for the purposes of continuing to exercise power and control over the victim ...

Often these cases fall short of satisfying the high threshold of vexatious litigant protections yet they are cases that absorb an enormous amount of court time including the time and resources of Magistrates, court staff and duty lawyers.

It is difficult to measure the impact this course of action has on victims who are forced to come back to court on multiple occasions to justify the need for an intervention order. It requires them to tell their story multiple times to multiple Magistrates, court staff and duty lawyers. The trauma and feelings of powerlessness to stop abuse perpetrated through the system have a profound effect on the physical and emotional well-being of victims as well as their ability to heal and recover from their experiences.<sup>96</sup>

A number of proposals were put to the Commission in relation to reducing the opportunities for perpetrators to abuse the court process, among them the following:

- ▷ require that the prospective cross-applicant seek leave of the court to make a cross-application<sup>97</sup>
- ▷ prohibit cross-applications by consent and require family violence registrars to more rigorously assess the merits of an application before filing it<sup>98</sup>
- ▷ improve front-end FVIO application case management to ensure that applications are complete and properly prosecuted (which will ensure that a respondent has limited bases on which to claim that the case against them is unfair, unclear or incomplete).<sup>99</sup>

In 2013–14 the County Court of Victoria heard 66 FVIO appeals from the Magistrates' Court and between July 2014 and May 2015 it heard 124 appeals.<sup>100</sup> In its submission, the County Court recommended a review of the appeal process in order to obviate abuse of process by respondents or appellants:

Appeal processes can sometimes be used by the alleged offender as a mechanism to further harass and intimidate a victim. In some cases the alleged offender (appellant) lodges an appeal and does not appear at the pre-appeal mention or appeal, but the victim is required to do so. The Commission should explore the option of legislative change to give the court the power to strike out the IVO appeal at the pre-appeal mention where the appellant does not appear. Such processes would need to ensure procedural fairness. For example, if the court was given such a power the pre-appeal mention should be adjourned while the appellant is served with notice that the appeal will be struck out if the appellant fails to attend court for the next mention date.<sup>101</sup>

The Commission notes that there are means by which courts can compel the attendance of respondents in FVIO hearings. Section 50 of the Family Violence Protection Act permits magistrates or registrars to issue warrants for a respondent's arrest if they believe on reasonable grounds that this is necessary to ensure the safety of the affected family member, to preserve the affected family member's property, to protect a child subjected to family violence by the respondent, or to ensure that the respondent attends court at a mention date.

## Delays related to parallel proceedings

In some cases delays can occur because other proceedings are happening at the same time in another court or in another jurisdiction of the same court. Parallel proceedings create delays because of both technical and procedural obstacles. The Magistrates' Court database has limited capacity to identify parallel proceedings within the Magistrates' Court and is not connected to other courts' databases. This means that magistrates are not automatically made aware of parallel proceedings involving one or both of the parties to an FVIO application.

Magistrate Noreen Toohey, the Regional Coordinating Magistrate for Sunshine/Werribee, told the Commission that when a magistrate is hearing an FVIO matter it is sometimes unclear whether parallel criminal charges have been listed for trial or pre-trial proceedings, or whether criminal charges are pending but have yet to be filed. Magistrate Toohey recounted having to adjourn directions hearings in FVIO matters in order to ascertain the status of criminal proceedings.<sup>102</sup>

Dr Karen Gelb reported to the Commission that one police prosecutor she had interviewed during her observation of magistrates' courts, noted that FVIO briefs are not always comprehensive. She noted that the lack of adequate information in some applications, especially in relation to parallel proceedings and associated orders, was a source of frustration for magistrates she interviewed. The concern for magistrates was twofold: they did not want to make an order that would be contrary to an order already in existence (especially with regard to child contact orders made under the *Family Law Act 1975* (Cth)) and they felt they could not adequately tailor an order without knowing what else was happening with the family.<sup>103</sup>

Dr Gelb suggested to the Commission:

Better information is needed in family violence matters. Police need to improve their collection of information from affected family members so that police prosecutors can be fully briefed about the circumstances of both the affected family member and the respondent to be ready to answer the magistrates' questions at court. Arrangements need to be implemented to facilitate sharing of information between the Department of Health and Human Services and the courts, and among the courts, on matters involving child protection issues and family law issues. This would reduce the number of matters that need to be adjourned for follow-up investigation or for 'further and better particulars'.<sup>104</sup>

The Commission's views on measures to improve the preparation of applications are covered in 'The way forward' below. Information sharing more broadly is considered in Chapter 7.

Magistrate Toohey told the Commission that adjourning FVIO proceedings might be inevitable if a criminal trial or plea is forthcoming, since the victim and the accused have different rights and roles in criminal and civil jurisdictions.<sup>105</sup> Criminal guilt and civil liability are subject to different standards of proof and carry different sanctions—notably, imprisonment is a sanction for some criminal offences.<sup>106</sup> A respondent who knows they are, or will soon be involved in criminal proceedings, might be reluctant to give evidence in an FVIO proceeding that could jeopardise or complicate his criminal case. Further, an applicant who is a witness in a criminal proceeding involving the respondent to her FVIO application, might also be reluctant to give evidence in her FVIO proceeding before the criminal proceeding is finalised.<sup>107</sup>

Adjourning FVIO proceedings until a criminal matter is finalised can result in a significant delay before a final order is made.<sup>108</sup> Prosecutions for summary offences usually must begin within 12 months of the offence occurring. Indictable offences are bound by different time limits, depending on the offence.<sup>109</sup> Deputy Chief Magistrate Felicity Broughton told the Commission that the period between an offence occurring and criminal proceedings concluding can vary widely but might well amount to 'many, many months and on occasions a year'.<sup>110</sup> Ordinarily, if an indictable offence is not tried summarily there must be a committal proceeding, and (subject to the outcome of the committal) the matter must be set down for a jury trial.<sup>111</sup> This amounts to an extended period of uncertainty for the applicant.

In his published findings following the inquest into the death of Luke Batty, Judge Gray identified delays in the hearing of criminal proceedings related to family violence as a concern. Gregory Anderson, the perpetrator in that case, was at one point charged with making a threat to commit serious injury and a threat to kill and contravening an FVIO. These charges had not been heard more than a year later, when Mr Anderson killed his son. Judge Gray described this as a 'very significant delay' that 'represented a lost opportunity to bring Mr Anderson to account, sentence him in respect of his offences (if they were proven), potentially place him on correctional orders and potentially engage him with mental health treatment services'.<sup>112</sup>

Proceedings in other civil jurisdictions can also be delayed in the absence of a final FVIO. For example, VCAT's capacity to terminate a tenancy agreement and compel the landlord to enter into a new agreement with the protected party to an FVIO applies only when a final order is in place.<sup>113</sup> Similarly, VOCAT has specific powers to suspend its consideration of an application if civil and criminal proceedings are under way or about to begin and are reasonably likely to resolve within six months.<sup>114</sup> Protraction of legal proceedings also increases legal costs. Victoria Legal Aid is resourced to assist with certain matters and aspects of the process but not all.<sup>115</sup> Many women told the Commission about the prohibitive costs of legal services and the financial consequences of pursuing court matters.<sup>116</sup> This is discussed below, under the heading 'Legal services'.

The Commission notes that in December 2014 the Magistrates' Court, working with Victoria Police and Victoria Legal Aid, introduced a model for the 'fast-tracking' of criminal family violence matters. The model commenced operating in Dandenong Magistrates' Court and has since been expanded to several other venues including Ballarat, Ringwood, Broadmeadows and Shepparton.<sup>117</sup> At Dandenong Magistrates' Court for example, all charges arising out of family violence incidents are listed within the following time lines:<sup>118</sup>

- ▷ if the accused person is on bail, one week between the release on bail and the first listing of the charges
- ▷ if the accused has been summonsed, four weeks from the date of issue of the summons to the first listing of the charges
- ▷ four weeks between the first and second listing
- ▷ four weeks from the second listing to the contest mention
- ▷ four weeks from the date of the contest mention to trial.

At the time of writing, the model is yet to be formally evaluated. The Commission has heard, however, that the model is showing great potential to limit delays between the occurrence and final determination of a criminal offence.<sup>119</sup> By decreasing delays in criminal proceedings, this approach could also reduce delays in parallel civil proceedings—both FVIO proceedings and, for example, matters in VCAT and VOCAT.

A consistent theme in the evidence before the Commission concerned the need to pursue a ‘one judge/court, one family’ approach, under which the same judicial officer has oversight of a matter for its duration.<sup>120</sup>

The Magistrates’ Court Family Violence Operating Procedures state that criminal offences arising from or including allegations of family violence and civil proceedings should be listed before the same magistrate on the one occasion wherever practical and appropriate.<sup>121</sup>

The Commission gives its view on ways to expedite and consolidate proceedings in ‘The way forward’ section of this chapter.

## Applications made by police

Police-initiated FVIO applications made up 66 per cent ( $n=23,216$ ) of all finalised applications to the Magistrates’ Court in 2013–14.<sup>122</sup> The Commission notes that some of the difficulties and delays experienced by applicants before the court hearing—for example, resulting from difficulty comprehending or filling out the application form and serving the respondent—can be alleviated when police make the application.

The Commission also heard, however, that there can also be problems caused by the haste with which police applicants sometimes bring FVIO applications before the court. Professor Leigh Goodmark, from the Francis Carey School of Law at the University of Maryland in the United States, told the Commission about the increased use of mandatory arrest powers and ‘no-drop prosecutions’ in relation to intimate partner violence in the US. In some US states police who attend a family violence incident where there is probable cause to suspect violence has occurred must make an arrest and when there is sufficient evidence of intimate partner violence, prosecutors must prosecute.<sup>123</sup>

Professor Goodmark said this has resulted in cases where women are rapidly, sometimes involuntarily, drawn into the criminal justice process and exposed to legal consequences for not cooperating with prosecutors. She observed that, although this approach was designed to deliver a fast and powerful response to family violence, it has had the perverse effect of alienating and diminishing those it is seeking to protect and vindicate: ‘When we do that we essentially put the State in the shoes of the batterer by allowing the State to make decisions that control her life in the way that the batterer was doing previously’.<sup>124</sup>

As noted, our FVIO process is a civil one (although contravening, or ‘breaching’ an FVIO is a criminal offence). However, the Commission received evidence that reflects in part the situation Professor Goodmark described.

Family violence safety notices are issued by police in Victoria and can take effect within hours of a family violence incident. Police-initiated FVIO applications can be made without the affected family member’s consent and can be issued within a few days of a family violence incident. Women’s Legal Service Victoria provided a case study to the Commission that illustrates some of the unwanted consequences of such an accelerated process:

On Sunday, Sam pushed Angie into a cupboard door and she called the police. Angie was taken to hospital with broken ribs and bruising. The police removed Sam from the house and Angie’s mum came over to look after the baby. A police officer visited Angie in hospital (she was still there at midnight) and was advised that she would have to go to Court on Monday because a safety notice had been taken out – the police officer explained that they were taking out an intervention order against Sam.

Angie knew very little about intervention orders. She had heard of them but didn’t know what it would mean for her and even though she had been at hospital until 2am on Monday morning, the police officer had told her and given her a piece of paper that said she had to be at court on Monday at 9.30am. The hearing notice said her hearing would take five minutes. She had mixed feelings about Sam – she was frightened of him and wanted the violence to stop but she also didn’t want him to be unable to come home and spend time with their daughter.<sup>125</sup>

The Commission also heard evidence that a significant proportion of first appearances at court are adjourned because of a lack of preparation by police. In her report to the Commission, Dr Gelb noted that at the eight magistrates' courts she observed, an average of 14 per cent of matters were adjourned without any orders imposed and a further 11 per cent were adjourned with interim orders.<sup>126</sup> Dr Gelb stated:

Most of the adjournments ... seemed to be needed to allow police to conduct additional investigation for the civil application. At times this involved providing further and better particulars about the incident – perhaps when police had not had sufficient time with the victim to elicit the full details of what happened. Other times the police prosecutor or civil advocate was not able to inform the magistrate about the affected family member's wishes with regard to the intervention order. For example, if the police informant had not spoken to the victim since the initial police report, then it could be unclear to the prosecutor if the conditions sought by police would be appropriate. In these circumstances, the matter was adjourned to allow the police to contact the victim to ascertain her or his wishes.<sup>127</sup>

Ms Melinda Walker, an accredited criminal law specialist who appeared at the Commission's hearings, also noted a lack of preparation by police in criminal proceedings for FVIO contraventions. In her statement, Ms Walker explains:

... I have observed an increase in police charges for breach of IVOs. However, although the police lay the charges, they often do not properly investigate and gather evidence sufficient for a prosecution. This is more obvious since the introduction of the *Criminal Procedure Act 2009* (Vic) and its requirement for the preparation of a preliminary brief. Police may lay 35 charges of breach in relation to 35 text messages, for instance, but they don't collect the evidence of the text messages. I have had many cases where charges end up being withdrawn because police informants fail to gather evidence in an admissible form. In those cases where the defendant has been in custody and then released after the withdrawal of the charges for want of prosecution there is a realistic risk that the accused will blame his victim for what happened.<sup>128</sup>

A victim of family violence may face a range of concurrent legal issues, including family law, child protection, property or contractual issues, which also need to be resolved. In their capacity as FVIO applicants, the police may have limited capacity to assist with these related issues.

We discuss our view on police applications and ways to ensure a consistent level of preparation in the sections titled 'Applications made by police' and 'Managing lists'.

## Understanding the court process

The Commission heard that a general lack of support and guidance for parties before they attend a hearing contributed to heightened uncertainty and anxiety.<sup>129</sup> The Commission was also informed that, in addition to heightening the applicant's anxiety, a lack of pre-hearing support can unfairly influence court outcomes.<sup>130</sup>

Loddon Campaspe Community Legal Centre provided to the Commission the results of a recent survey of 190 women whom the centre supported in obtaining intervention orders in rural and regional magistrates' courts.<sup>131</sup> Many of the women surveyed said they had a poor understanding of court processes or of what would be expected of them once they arrived in court:

We [the applicant and her mother] went in there as complete amateurs, knew nothing about the system, knew nothing about anything and that's what it's been like all the way through. We just clawed our way through in the dark.<sup>132</sup>

A 2013 Victims Support Agency survey of the experiences of victims and witnesses of crime (a majority of whom were victims of and witnesses to family violence-related offending) found that more than two-thirds ( $n=46$ ) of respondents ranked their knowledge of court processes as 'very low'. The survey authors noted that this unfamiliarity, and the fear and uncertainty it creates, can lead to the withdrawal of proceedings because a victim feels unprepared to testify.<sup>133</sup>

## Attending court

Concern about the safety and wellbeing of applicants and witnesses in court before and after hearings and about the unsuitability of courts for family violence matters were among the most prominent themes in submissions the Commission received. It is an issue on which the judiciary, court staff and administrators, lawyers, service providers and court users all seem to agree.

Dr Heenan described the scene at the Melbourne Magistrates' Court prior to parties being called into court for their FVIO hearing as follows:

Women are required to assemble on level 6 where the court room and legal services are located. There are people everywhere; the waiting area is completely insufficient for the number of people attending court. Women sit on the floor nursing their babies and toddlers. Women's Legal Service and Legal Aid provide advice to women from a tiny alcove. Applicants are told to wait in the alcove area and respondents are told to wait down the other end of the floor, but the applicants and respondents are in direct line of sight of each other. Many women are terrified and have to sit there for hours waiting for their matter to be called on whilst being directly exposed to the perpetrator. Some respondents behave in a threatening and intimidating manner whilst waiting for the matter to be heard which further exacerbates the anxiety of the applicant ... You can see the anxiety levels rising in the waiting area as the day wears on ... For some women, the longer they sit in the waiting area and reflect on things, the more they see taking out the intervention order as the least safe option for them, thinking it will only inflame the perpetrator.<sup>134</sup>

The Commission heard that entrances to magistrates' courts are often poorly designed. In most courts applicants and respondents in all cases listed for that day will be attending court at the same time. This means long queues at the court entrance.<sup>135</sup> The presence and extent of security varies between courts, and existing security might not be able to supervise the area beyond the court entrance, so crowding at this point creates the potential for unsupervised contact between applicant and respondent:

There have been cases where things go on out front of court building, but security at the door don't do anything as it isn't their job. The car park is at the back of the court, out of sight of security. Asking lawyers to walk them to the car is putting lawyers at risk also. The Court just tells you to contact the police, but police have no one there to do it ...<sup>136</sup>

The Commission also heard that the design of many court entrances did not contemplate the use of modern security screening tools (such as X-ray scanners and metal detectors) and in many cases no such screening occurs.<sup>137</sup> Mr Chris Casey, a Senior Lawyer at the Loddon Campaspe Community Legal Centre, told the Commission of an incident in which a man had taken a knife into the waiting area of a regional magistrates' court in his bicycle basket. Mr Casey noticed the knife more than an hour later, whereupon police attended.<sup>138</sup>

The Commission visited a number of regional and metropolitan courts throughout Victoria and observed courtrooms with inadequate bathroom facilities; crowded and unsafe waiting areas; conflicts between parties that required the intervention of security; and court proceedings continuously disrupted by loudspeaker announcements.<sup>139</sup> The Commission notes that in its 2006 review of family violence laws, the Victorian Law Reform Commission identified safety at courts as a major issue:

[M]any victims said they feared for their safety in the court building when seeking an intervention order. They reported feeling unsafe when entering or exiting the courtroom, when waiting for their matter to be heard, or in the courtroom itself.<sup>140</sup>

The most frequently raised concern was that a lack of separate waiting space in some courts exposes applicants to abuse by respondents, or by their family or friends, while they are waiting for their matter to be called.<sup>141</sup>

The desire for separate waiting areas also extended to separate entrances, and particularly exits, to the courtroom.<sup>142</sup>

Long queues are also common at court registry counters. In a number of courts registry counters are shared by applicants and respondents and can also be used by multiple services—including, for example, legal and family violence specialist services located within the court. This makes it difficult for service providers to maintain confidentiality with their clients and puts victims at risk of being in the same queue as the respondent. Registry counters are sometimes exposed to general waiting areas and, when there is insufficient time or space for a private meeting with registry staff, court users can be compelled to divulge traumatic personal information in the view and earshot of others.<sup>143</sup>

Legal representatives, usually from Victoria Legal Aid or a community legal centre and sometimes VLA-funded private practitioners, are on site at many magistrates' courts. The Commission was advised that a number of courts do not have sufficient designated space for the provision of legal advice. This can compromise the confidentiality of the advice provided or impede a frank and complete exchange between client and lawyer. It was said that lawyers at some courts were obliged to give legal advice outside, in parking areas or under trees adjacent to the court building.<sup>144</sup>

Once at court, people often have to wait a long time before their matter is heard.<sup>145</sup> Some magistrates' courts do not have designated waiting areas for applicants and respondents or these areas are not designed to offer privacy for applicants. Confrontations between applicants and respondents waiting for an FVIO application to be heard are not uncommon:

Serious incidents occur in the court surroundings with some regularity. Lower order harassment and intimidation is commonplace eg respondents, their friends and relations eyeball applicants and make threats and harassing comments.<sup>146</sup>

The psychological and practical effects of long waits at court before a hearing can be significant for the victim:

For his hearing, I had to wait in the same court room for six hours. During this period, he tried to intimidate me by threatening me with gestures, mouthing threats and insults, sitting directly in front of me or glaring at me.<sup>147</sup>

Where women are informed, often by police that they need to be at court at 9.30am on a Monday morning (or other nominated day), women assume this to mean that they have an appointment for 9.30am. They do not know that in all likelihood they will be at court for most of the day. So, many women come without nappies for their babies or toddlers, without lunch, without having made arrangements for school pick up of older children. As their day in court drags on, and on, women become even more anxious about being at court as the demands of their role as mother begin to press in on them.<sup>148</sup>

The Commission was informed that some magistrates' courts do not have adequate child-care facilities, which can expose children attending court with their parent or family members to fear and trauma.<sup>149</sup>

In its submission Court Services Victoria suggested that there are limits to what can be done to improve security in many court buildings because of the buildings' age,<sup>150</sup> although there are 'opportunities to improve the facilities at the remaining government owned regional and suburban courts and leased facilities'.<sup>151</sup>

The Magistrates' Court of Victoria and the Children's Court of Victoria recommended that resources be provided so that court buildings can be 'safe, comfortable and accessible for parties in family violence cases'<sup>152</sup> and that there be '[i]nvestment in security and safety measures to ensure all court buildings and related off site facilities are safe environments'.<sup>153</sup>

The Commission notes that the Victorian Government has allocated \$2.75 million to the Magistrates' Court to create safe waiting areas in more courts, to the extent that current infrastructure permits.<sup>154</sup> It has allocated an additional \$1.5 million for minor works and arrangements to accommodate specialist court staff and Court Integrated Services Program staff.<sup>155</sup> The court has conducted a preliminary assessment of a non-exhaustive range of issues at 20 courts, and estimated that approximately \$13 million would be required to address the main issues identified at these venues (additional venues requiring substantial works were not included in this assessment).<sup>156</sup>

In addition, a broader safety audit of Magistrates' Court venues has been conducted. Fifteen venues were visited and the remainder subject to a 'desktop' audit. Stakeholders were also consulted as part of this audit.<sup>157</sup>

The Commission's views on improving court infrastructure are expressed below in 'The way forward' section below.

## At the hearing

Whether an application is initiated personally or by police, the applicant is generally expected to be physically present in court with the respondent (whom the applicant might have gone to great lengths to leave, escape or avoid) and to give evidence in the respondent's presence if required.<sup>158</sup> As a number of submissions noted, the hearing can be a very difficult experience for victims of family violence:<sup>159</sup>

Here's how the victim sees this process: 'it's not what they say, it's how they say it', 'it can be the way he looks at me', 'I'm frightened and feel I will lose it on the stand if he shouts at me', etc ... After years of abuse, just being in the same room as the perpetrator, irrespective of how many Police Officers are in the same room, it is a terrifying experience. Just being confronted by the perpetrator once more ... When certain words or phrases have been instilled into the victim's mind, the perpetrator only has to make sure that is said to the victim and they feel intimidate[d], harassed, terrified out of their minds ... The idea of a Protection Order is to make the victim feel safe, but to get it the victim has to put themselves through hell again.<sup>160</sup>

Some submissions stressed the importance of a magistrate's language, manner and behaviour in court, to ensuring that parties feel respected and heard, that they understand the court process, and that their situation and its relationship to the dynamics of family violence are properly understood.<sup>161</sup> The Judicial College of Victoria submitted:

For victims, for whom coming forward to apply for an intervention order may have taken many years and much courage, a magistrate who responds compassionately and understands the nature and complexities of family violence can help her feel confident that it has been a process worth undertaking. If the victim feels she is being dismissed or misunderstood by the court, she may not trust the court to help in the future.<sup>162</sup>

Some submissions praised the approach of particular magistrates.<sup>163</sup> Others, however, described negative interactions with magistrates. A study conducted by the Centre for Rural and Regional Law and Justice found as follows:

[A] number of women reportedly felt intimidated by the magistrate, being 'talked down to' or being told off for talking. Negative interactions with magistrates minimised women's experiences, mirrored prior experiences of abuse and reinforced feelings of disempowerment.<sup>164</sup>

Court users and legal services described instances of magistrates communicating in abrupt, dismissive and disrespectful ways and trivialising violence, especially non-physical violence.<sup>165</sup> The Commission was told that some magistrates have asked victims why they let perpetrators into the house or why they returned to perpetrators<sup>166</sup> and others have spoken to applicants in a critical or frustrated manner, reminding victims of their experience of violence.<sup>167</sup>

The magistrate dealing with an FVIO matter can also change during the course of hearings (and with them, the approach taken or level of family violence expertise)—and, of course, different judicial officers may be dealing with different aspects of the same matter. In addition, changes of location and other personnel, and the need to re-tell one's story multiple times or to correct misunderstandings caused by limited information sharing can greatly exacerbate the stress associated with court hearings for victims of family violence.

The Commission notes that section 69 of the Family Violence Protection Act allows for FVIO proceedings 'to be conducted from a place other than the courtroom by means of a closed circuit television or other facilities that enable communication between that place and the courtroom'.<sup>168</sup> Section 360 of the *Criminal Procedure Act 2009* (Vic) also provides for alternative arrangements for giving evidence in a number of circumstances—including in matters involving family violence as defined by the Family Violence Protection Act.

The Commission was informed that the Magistrates' Court and Women's Legal Service Victoria have introduced a video-conferencing pilot that allows affected family members at high risk to attend court from a confidential remote location, preventing potential contact with perpetrators and improving access to justice for women in regional or remote locations.<sup>169</sup>

The Commission also notes that \$14.7 million has been provided to the Magistrates' Court to upgrade its videoconferencing facilities. The upgrade will involve the installation of 148 video-conferencing units in courtrooms across Victoria. It is expected that all venues will be equipped by March 2017.<sup>170</sup>

Concerns about the conduct of some magistrates, particularly in FVIO proceedings, are exacerbated by perceived difficulties in raising these concerns with the court. For example, the recent Deakin University *Landscapes of Violence* report on women experiencing violence in rural and regional Victoria noted that some advocates were reluctant to proceed with complaints on their own behalf or a client's behalf, 'regardless of whether they believed others could substantiate' the complaints, because they 'feared the possible repercussions', and were worried that 'they and their future clients might encounter animosity from court officials'.<sup>171</sup> Some workers and lawyers felt that court user meetings were a 'comfortable alternative space in which to raise concerns', but others felt they were not an appropriate forum.<sup>172</sup> Some victims of family violence who had made official complaints found the complaints process 'disempowering and the outcomes frustrating'.<sup>173</sup>

The Commission notes that the Magistrates' Court's complaints policy aims to effectively handle complaints (where possible, at a local level) in a fair, prompt and impartial manner, and to incorporate feedback into its planning and improvement efforts.<sup>174</sup>

We also note that at date of writing, the Judicial Commission of Victoria Bill 2015 (Vic) is being debated in the Victorian Parliament. If passed into law, this would amend the *Constitution Act 1975* (Vic) to establish a Judicial Commission with the authority to hear complaints about the conduct of judicial officers and VCAT members, whether such complaints are from members of the public (including, but not limited to legal practitioners) or via referral from the Attorney-General.<sup>175</sup>

## The conditions of intervention orders

Section 81(1) of the Family Violence Protection Act provides that the court may include 'any conditions that appear to the court necessary or desirable in the circumstances' when making an FVIO. Conditions that can be included are listed in the Act, with the proviso that they do not limit the conditions that can be made under section 81(1).

The Commission heard that in the context of a busy family violence list there might be a tendency for magistrates to treat this list as exhaustive, rather than tailoring conditions to the parties' circumstances.<sup>176</sup>

The Commission was told that the language used in orders can be confusing and this can affect parties' ability to exercise their rights and meet their responsibilities under an order.<sup>177</sup> This difficulty arose in the inquest into the death of Luke Batty. In that case, the operation of exceptions to conditions excluding Gregory Anderson from contact with Luke and his mother, Ms Rosie Batty, was unclear. Judge Gray noted:

There were ambiguities in the successive FVIOs made against Mr Anderson. The language used was unclear ... I agree with Magistrate Goldsbrough's evidence that there is room for improving the drafting of the orders. It is important that [an] FVIO be written in a simple and unambiguous manner. Greater clarity would assist victims, offenders and police officers to understand what the orders mean and how they are to be interpreted and enforced.<sup>178</sup>

The Commission's views on judicial training in the nature and dynamics of family violence are considered in Chapter 40. Strategies to make better use of the time and skills of the magistracy, and improve the language of intervention orders are considered in 'The way forward'.

## Orders made by consent

The Commission was told that a high proportion of FVIOs are made by consent; that is, the terms of the order are agreed by the parties (often through their representatives) and then proposed to the magistrate.<sup>179</sup>

If the respondent contests an FVIO application, the court must satisfy itself on the balance of probabilities that the respondent 'has committed family violence against the affected family member and is likely to continue to do so or do so again'.<sup>180</sup> However, if the parties mutually consent to the orders sought, the court may (unless the respondent is a child) make the order agreed upon without satisfying itself that family violence has occurred or is likely to continue or recur, and without the respondent admitting to any or all of the allegations set out in the application.<sup>181</sup>

The court has discretionary power under the Act to test the basis of orders sought (even if they are agreed on by both parties). It can elect to conduct a hearing into the particulars of the order sought if it is in the interests of justice to do so, and can refuse to make the order sought if it believes that it may 'pose a risk to the safety of one of the parties or a child of the affected family member or respondent'. The court is also required to consider whether there are any children who are family members of the affected family member or respondent, who may have been exposed to family violence, and may on its own initiative add the child to any orders made or make separate orders in respect of the child.<sup>182</sup>

Information provided by the Magistrates' Court of Victoria in response to a request for information from the Royal Commission showed that in 2013–14, 13,228 intervention orders were finalised by consent in the Magistrates' Court and 597 in the Children's Court.<sup>183</sup> Ms Leanne Sinclair, Family Violence Program Manager at Victoria Legal Aid, told the Commission that 'the greater majority of [FVIO] matters in which duty lawyers assist would resolve by consent without admissions'.<sup>184</sup> Acting Inspector Paul Rudd, Officer in Charge, Melbourne Prosecutions Unit, Victoria Police, told the Commission that orders made 'by consent without admissions on a first mention [amount to] around about 50 per cent, give or take 10 per cent'.<sup>185</sup> Former police lawyer/civil advocate Ms Alice Cooney, stated that 'the jurisdiction is heavily reliant on the consent without admission framework, including both to an interim order and a final order'.<sup>186</sup>

Dr Gelb observed that in the eight Victorian magistrates' courts she attended final orders were made by consent in, on average, 69 per cent of all cases where respondents were present, 'with only a small proportion of matters being adjourned for contest'.<sup>187</sup> Dr Gelb added that on the days of her observations at court:

There seem[ed] to be no (observable) specific relationship between the nature of the conditions imposed and the willingness of the respondent to consent to the order. Consent orders were observed in matters where limited conditions were imposed, in matters where comprehensive conditions were imposed and in matters where a men's behaviour change program order or condition was attached.<sup>188</sup>

Many members of the judiciary, lawyers and service providers encourage the making of orders by consent.<sup>189</sup> This process reduces the volume of court work to some extent and for the applicant, it reduces the duration and expense of the legal process, limits their obligation to present or give evidence, and expedites the attainment of final orders, with the certainty and safety that brings.

The Commission did, however, hear some evidence that in busier lists, the time available to scrutinise orders by consent is reduced.<sup>190</sup> Mr Casey noted that they are often resolved in a matter of minutes, involving a brief exchange advising the magistrate that the matter has resolved by way of consent without admissions, and the magistrate accepting this statement and making the order.<sup>191</sup> Mr Casey then qualified this evidence, noting that the example he provided was less typical under the Family Violence Protection Act and in the local regional court where Loddon Campaspe Community Legal Centre lawyers often appear.<sup>192</sup>

Ms Sinclair observed that the nature of consent order proceedings:

... varies greatly, especially if we look at some of our specialist courts ... [where] a lot more time is spent by the magistrate reading through the terms of the order, especially where there are children involved. Some magistrates will comment that children need to be raised in a safe environment, that some of this behaviour complained of is characterising what is family violence, that family violence has a very broad definition, and will go through accountability, stress the importance of compliance with the orders, setting out the penalties and the criminal repercussions for breach of an intervention order. Some magistrates will talk about variations to orders and how that's to take place. In cases where there are safe contact orders which are being made, so the parties may be resuming a relationship, some magistrates will then talk about referrals to services and the like. But most certainly I do agree that in some courts it is a very abbreviated service which is being received.<sup>193</sup>

Lay witness, Ms 'Anna Jones' recalled the following experience of her application for an extension of an FVIO:

The result of the contested hearing in 2015 was that the Magistrate granted a 12 month extension of the existing Intervention Order. The Magistrate declared a number of times throughout the hearing that he was 'not really prepared to adjudicate' the matter and that he would leave it to my Legal Aid representative to direct the process. Although I was technically 'successful', I am very disappointed by the Magistrate's conduct of the proceeding.<sup>194</sup>

The Commission notes that in Victoria, mediation is used as part of the personal safety intervention order process, which applies when a person fears for their safety because of the behaviour of another person who is not a family member.<sup>195</sup> If the court considers mediation appropriate, it can direct parties to attend a mediation assessment.<sup>196</sup> Because the context giving rise to the mediation will most often involve violence or threatened violence, safeguards exist for assessment of the suitability of mediation and for the safety of the alleged victim.<sup>197</sup>

A review of the pilot project established with the Dispute Settlement Centre of Victoria and the Magistrates' Court of Victoria for non-family intervention order cases in 2002–03 found high levels of participant satisfaction with the mediation process and a reduced average disposition time for intervention order cases.<sup>198</sup>

A mediation process is incorporated in the FVIO process in the Australian Capital Territory, where the registrar will refer parties to mediation in certain circumstances.<sup>199</sup>

In 2010 the Australian and New South Wales Law Reform Commissions recommended that jurisdictions permitting the use of mediation in FVIO processes proceed with caution. The Commissions' report noted the importance of safety during the negotiation process and the need for adequate court officer training in relation to risk assessment.<sup>200</sup> They recommended as follows:

Recommendation 23–1 Where state and territory family violence legislation permits the use of alternative dispute resolution in family violence protection order proceedings, such legislation should provide that violence cannot be negotiated or mediated.

Recommendation 23–2 State and territory legislation and policies for alternative dispute resolution in family violence protection order proceedings should provide for comprehensive screening and risk assessment mechanisms.

Recommendation 23–3 State and territory governments, courts, and alternative dispute resolution service providers should ensure that, where alternative dispute resolution is permitted in relation to family violence protection order proceedings, education and training is provided to judicial and court officers and alternative dispute resolution practitioners on:

- (a) the nature and dynamics of family violence; and
- (b) the conduct of alternative dispute resolution processes in the context of family violence.<sup>201</sup>

The Family Violence Protection Act does not provide for the use of alternative dispute resolution in the Victorian FVIO process.

## Permanent and self-executing orders

The Commission heard about two proposals for amending the way orders operate. The first is that they should operate 'in perpetuity', so that—rather than, for example, remaining in force for 12 months, they remain in force indefinitely unless and until a party applies for a withdrawal or variation. Orders operate in this way in New Zealand.<sup>202</sup> Among the perceived advantages are that the people protected by the order do not need to return to court after a certain time has elapsed to seek an extension or variation, and risk coming into further contact with the perpetrator.<sup>203</sup> The indefinite status of the order also obviates the need for the court to fix a term—which may require an uncertain prediction about the level of medium to long-term risk of further violence—and the need for police and others to be aware of the impending expiration of the order and consider taking further measures to protect the victim once the order expires.

The second proposal, enacted by the *Family Violence Protection Amendment Act 2014* (Vic) provides for the introduction of 'self-executing orders'<sup>204</sup> and is due to come into force on 1 July 2016. It will allow for the inclusion of a 'finalisation condition' on interim orders, to provide that the interim order becomes a final order, with the same conditions as the interim order, 28 days after being served on the respondent. A finalisation condition will only attach if the court is satisfied that it is appropriate, having regard to a range of factors including

- ▷ whether there is a history of family violence
- ▷ the existence of family violence risk factors
- ▷ whether there are other legal proceedings between the protected person and the respondent
- ▷ whether the affected family member has obtained legal advice
- ▷ whether the affected family member and respondents will understand the written explanation of the interim order that is provided with the order
- ▷ the existence of factors making it desirable that the respondent attend a hearing for the final order.<sup>205</sup>

A similar regime operates in New Zealand.<sup>206</sup> There, the temporary protection order will usually be made permanent after three months if not contested. The potential advantages of this approach include reduced demand pressures on courts, and the victim of family violence avoiding the potential re-traumatisation of having to attend court.

## After the hearing

It is evident that some applicants may leave an FVIO hearing without a clear sense of what took place or what will follow<sup>207</sup> and without feeling that they were able to communicate their experience and needs to the court or have these needs understood.<sup>208</sup> This may be because the magistrate had little time to explain the substance of the hearing or the next steps to a satisfactory extent and that there was little or no opportunity for parties to debrief with court staff or legal services.<sup>209</sup>

The Commission was told that, even when an effort is made to explain orders, directions or procedural matters, applicants might not be in a state of mind to process the information. Ms Abbey Newman, Family Violence Applicant Support Worker at Sunshine Magistrates' Court, explained:

... a lot of the information is going over the applicant's head because they are in a state of trauma. If they are coming on a Monday, quite often the incident has happened from Friday onwards. Things are really fresh. They're coming to a system that most people haven't had experience with. We talk a very different language. The setting is pretty unfamiliar to most people. We are also bringing them in a state of trauma. So, what they are actually required to do is understand our system, understand our language, to make decisions [that will] affect the rest of their lives and their children's lives, and make those decisions pretty quickly with a very short engagement with legal services, with myself, with the whole court experience ...

We are asking people to be lawyers, to understand legal language and also understand how it is, what actually happens when you breach, when there's breaches, what constitutes a breach, what police should be listening to, how to report breaches.<sup>210</sup>

Court Network emphasised the lack of support for victims after the hearing. It noted that Court Network staff try to redress this by, for example, asking an applicant how they are leaving court and what safety plans they have, assisting with referrals, and putting in their diary the applicant's next court date so that they can arrange to meet with her and, if necessary, arrange support services on her return court date.<sup>211</sup>

Court Network also drew attention to the often ad hoc safety measures for women leaving court:

Court Network is concerned that the increased safety needs for women exiting court are not being addressed. In some courts creative solutions are put in place such as creating a 'window' for the woman to leave whilst the court is preparing final papers for the man. In other courts she may be assisted to exit via a 'back door'.

If the best that the court system can offer women, in order to safely exit the building, is to leave by a back door, then we have serious and urgent questions to ask of the system we have devised to enable protection for women via attending court to seek a court order. Court Networkers express their sense of high anxiety and feelings of helplessness about the moment when a woman leaves the court premises knowing that this is the time when she is most vulnerable (having challenged his controlling behaviour by seeking an intervention order). The court sees a successful outcome in getting another case through the list. Networkers see success as a woman safely supported during and **following** the court process. They are hoping they don't hear about the woman they were supporting that day on the news – as a fatality.<sup>212</sup>

A further matter brought to the Commission's attention is the fact that respondents can leave court without being served with orders, with the result that service must be effected by police subsequently. This results in unnecessary expenditure of police time and resources and in some cases, delay before an order comes into force. Service of orders by police is discussed further in Chapter 15.

The Commission's views on improvement of court infrastructure and processes, which bear on safety of parties after court and the capacity of court staff to assist them throughout their time at court, are explored in 'The way forward' section of this chapter.

## The court experience of particular groups

### Children and young people

A 2010 CREATE Foundation study of children and young people attending the Children's Court of Victoria found that all 25 participants felt the court was 'scary' the first time they walked in.<sup>213</sup> One child described their experience: 'I first went when I was seven and I was so scared, I should not have gone when I was so young. I had nightmares for ages'.<sup>214</sup> Some children reported that what intimidated them was the 'airport-style' security at the entrance to Melbourne Children's Court.<sup>215</sup> The Commission was told that the 'dynamic security' system at the Neighbourhood Justice Centre in Collingwood is preferable:

We have a 'dynamic security' system at the NJC. We made a conscious decision not to have security screening at the front door. Instead we have a concierge function built into the security contract. There is always a security guard on the court floor and another security guard who roams the building. The security guards will talk to and interact with every person who comes into the building. They are the first port of call. They also attend staff meetings and professional development. We are the only court in Victoria with such a concierge system.<sup>216</sup>

The CREATE Foundation also recommended that children's court buildings be redesigned to be 'young person-friendly':

... with bright colours on the walls and things to play with. An outdoor area where children could play and where children can be children was also a priority. Young people wanted to have time out on their own to digest what was happening or be able to spend time with family that they don't often get to see, in a private space.<sup>217</sup>

The Commission notes that the new children's court facility in Broadmeadows, incorporating the Family Drug Treatment Court, will have child- and family-friendly public spaces, as well as multiple waiting areas and a purpose-designed separate waiting area for children in safe custody.<sup>218</sup>

## Older people

Some older people may experience particular difficulty in accessing and using the courts. As noted, many courts have deficient physical infrastructure, which may create problems for people with age-related mobility or sensory impairments.<sup>219</sup> For example, some courts have insufficient seating; heavy doors, or steps leading up to entrances; inadequate toilet facilities; and a system for announcing hearings by loud speaker, which people who are hard of hearing cannot hear.

## Culturally and linguistically diverse communities

Between 2009–10 and 2013–14 an average 1.8 per cent of all affected family members and 1.6 per cent of respondents were recorded as needing an interpreter.<sup>220</sup> The Commission was told of a number of difficulties relating to the consistency, availability, quality and impartiality of interpreters in the courts.<sup>221</sup> This is discussed in Chapter 28.

Some submissions pointed out that magistrates' courts are not uniformly equipped with multi-lingual signage and that forms, orders and information provided to parties can be unavailable in languages other than English.<sup>222</sup>

The difficulties with the application process outlined above can be exacerbated for people facing language barriers. One individual who has worked with culturally and linguistically diverse court users told the Commission:

CALD community members coming to Court to make an application typically work through the form with the assistance of a telephone interpreter slowly, one question at a time. This procedural obstacle (that is, the form is only available in written English) can unintentionally lead to frustration for both applicants and Registry staff. Completion of the application almost always exceeds the amount of time expected by applicants and prolonged engagement with Registry staff is often the norm.<sup>223</sup>

## People in rural and regional communities

Many of the difficulties outlined in the section entitled 'Attending court' are exacerbated for people in rural and regional communities. The Commission visited a number of rural and regional courts. There is a higher likelihood that an applicant or respondent will encounter people familiar to them—people with whom they share friends, a school, a workplace or a neighbourhood—in the court, among court staff, or even among the magistracy.<sup>224</sup> The problem of lack of anonymity is magnified when there are no private interview rooms or waiting areas in courts—as is more often the case in rural and regional magistrates' courts, some of which are among the oldest and most poorly equipped in the state.<sup>225</sup>

The risk of encountering people known to them can discourage individuals from bringing an application and attending court.

## People with disabilities

People with physical, intellectual, sensory, communication or mental health disabilities can experience additional difficulties when trying to make their way through the court environment.<sup>226</sup>

A recent disability access survey report by Women With Disabilities Victoria identified a wide range of practical obstacles experienced by women with disabilities attending magistrates' courts. Issues included an inability to access private interview rooms in a wheelchair; women with impaired hearing missing their matter being called over the PA system; and stairs, heavy doors and other impediments which made the court premises difficult or impossible to access.<sup>227</sup> These issues are considered further in Chapter 31.

The Commission notes that the Judicial College of Victoria, with assistance from the Victorian Equal Opportunity and Human Rights Commission, is preparing a bench book to assist courts and judicial officers in better accommodating people with disabilities.<sup>228</sup>

## Aboriginal and Torres Strait Islander peoples

The Commission was informed that Aboriginal and Torres Strait Islander people can find courts culturally insensitive,<sup>229</sup> and that family violence training and specialisation and cultural awareness training for magistrates was important to ensure Aboriginal and Torres Strait Islanders receive appropriate and effective legal outcomes.<sup>230</sup>

Some Aboriginal and Torres Strait Islander people can also experience other barriers to their contact with the courts. The fraught history of the state's engagement with Aboriginal and Torres Strait Islander communities and the over-representation of Aboriginal and Torres Strait Islander people in the prison population have led to a reluctance among some communities and families to become involved with police, courts and legal services. In particular, Aboriginal and Torres Strait Islander women can be less willing to work with police in applying for FVIOs and might experience heightened vulnerability to violence as a consequence of taking court action.<sup>231</sup>

The Commission was advised of the Koori Family Violence and Victims Support Program (formerly the Koori Family Violence Court Support Program), which provides assistance to Koori families who have a family violence-related matter before the court. The program employs a Koori male and Koori female family violence support worker to provide information and guidance about the court process and available family violence services. Referrals are accepted from court registry staff and magistrates, other court programs, Victoria Police and external agencies. The program is located in Melbourne, although staff do attend other metropolitan courts.<sup>232</sup> However, we understand that funding for this program has been discontinued (discussed later in this chapter).

## Lesbian, gay, bisexual, transgender and intersex people

Some of the particular challenges confronting LGBTI people in relation to family violence court proceedings include:

- ▷ being treated less seriously than heterosexual people in comparable circumstances in a court setting
- ▷ having to explain their sexual preference, gender identity or relationship to magistrates and/or court staff
- ▷ having to deal with the limited understanding of some members of the judiciary in relation to LGBTI identities and relationships.<sup>233</sup>

## Engaging with perpetrators

In its 2015 report entitled *Opportunities for Early Intervention: bringing perpetrators of family violence into view*, the Centre for Innovative Justice refers to the benefits of the justice system effectively involving perpetrators by being:

... an active and involved participant that can interrupt [the cycle of family violence] and make those who use it more visible – monitoring a perpetrator’s behaviour; bringing him back to court to account for his commitments; making sure he is known to relevant service agencies; addressing related addiction, mental health or accommodation problems; and identifying whatever stake he may have in becoming a safer man.<sup>234</sup>

Effective involvement requires that the perpetrator understands what is happening:

Research concerning procedural fairness confirms that the way in which a defendant is treated in the courtroom – including whether he feels heard and respected, and whether communication is clear – has a profound effect on his perception of the process, as well as the likelihood of him complying with court orders and the law generally.<sup>235</sup>

It also requires meaningful communication between a magistrate and respondent in court, to impress on the respondent the seriousness of their wrongdoing and challenge ‘the denial and minimisation that so many family violence perpetrators display.’<sup>236</sup>

The Centre for Innovative Justice’s report concludes that an interaction with the justice system that is unnecessary, superficial or perfunctory:

... propels perpetrators from scrutiny ... compounds existing isolation and, in some cases, vindicates a perpetrator’s sense of justification or entitlement by failing to respond in an adequate or timely way.<sup>237</sup>

Many court-based professionals advised the Commission about the assistance provided to respondents in FVIO proceedings.<sup>238</sup> Ms Julie Davies, the family violence respondent support worker at the Ballarat Magistrates’ Court, explained the substance and value of her role:

My role is supportive. The first thing I do when I meet a respondent is tell them my role and that I am there to support them ... and outline what the process will be for the morning in court. I explain the nature of the application to the respondent and inform them that the proceeding is a civil proceeding and not criminal. I will also take the respondent into the courtroom to familiarise them with the set up and where they will sit, if they are unfamiliar and stressed. In my experience, this process helps to reduce the anxiety of the respondent. They often seem relieved just by me taking them through these basic steps ...

My aim is to help reduce the respondent’s initial anxiety. If they are calm, they are more rational ... I try to challenge the respondent’s thinking without being judgemental. My philosophy is that giving appropriate attention to the perpetrator will ultimately help the applicant.

Another important aspect of my role when I meet with respondents is to find out why family violence is occurring. I try to work through issues with respondents to determine why they are perpetrators of family violence ...

In my experience, respondents are quite agitated at first ... Often [they] don’t know what the intervention order process involves and they don’t understand the terms of the order. For example, they don’t know if they can or can’t see their kids and they generally don’t understand what they can and can’t do because no one has explained the order to them. Respondent workers can help with this.<sup>239</sup>

As discussed further below, duty lawyers also have an essential role in relation to respondents. Victoria Legal Aid regularly advises and represents respondents in FVIO matters. In its submission, it stated:

Victoria Legal Aid has extensive experience providing legal services to people who are accused of committing family violence related criminal offences. By providing these services we do not condone or excuse the conduct. By providing legal services to accused, respondents and offenders, we uphold their rights to a fair hearing and ensure that all relevant information is put before the court, necessary for the court to decide or arrive at fair and appropriate disposition. There are also secondary benefits that flow to the legal system and victims of crime where an accused has access to legal representation.<sup>240</sup>

Similarly, the Centre for Innovative Justice observed:

Interaction with a lawyer is another opportunity for the respondent to hear that his behaviour will not be tolerated by the justice system; that he must comply with any intervention order made; and that he should consider referral to a relevant service agency for any associated problems he may have. Legal advice also means that perpetrators are more likely to negotiate terms of an order with which they are able to comply.<sup>241</sup>

Ms Helen Fatouros, Director, Criminal Law Services, Victoria Legal Aid told the Commission:

Defence practitioners ... strike a difficult balance between protecting an accused person's rights and also being assertive in professionally challenging and encouraging clients with a range of vulnerabilities to make decisions that support rehabilitation and early resolution where appropriate; or which lead to well focused contests where the issues and cross-examination of victims and witnesses is confined, well-prepared and in the best interests of their client.<sup>242</sup>

Conversely, respondents without legal assistance (especially those unfamiliar with the court setting and process) may feel confused and alienated, and so be less likely to abide by the court's decision or reflect critically on their own behaviour.

An issue of considerable concern is that respondents often do not attend court, despite having been served with the application and summons. In Dr Gelb's observations of eight magistrates' court venues, she noted that, averaged across the courts, the respondent was present in just 47 per cent of matters. As Dr Gelb points out:

This can be problematic, as without a respondent there is no opportunity for the court to impart the seriousness of the order and the consequences of breach ... Respondent absence also raises concerns with regard to procedural justice: if the respondent is absent, there is no opportunity for him ... to be heard at court.<sup>243</sup>

## Legal services

Much of the work of legal services takes place outside courts. For example, Victoria Legal Aid has a free telephone information and advice service, Legal Help, which in 2013–14 provided assistance in 8432 family violence matters and made 4247 referrals.<sup>244</sup> In its response to the Royal Commission's notice to produce, Victoria Legal Aid explained:

Legal Help takes over 100,000 calls each year. We provide information, advice and referral on a wide range of legal problems and related social issues, including family violence ...

Legal Help is accessible for culturally and linguistically diverse communities ... we provide 20 dedicated language lines and use the telephone interpreter service to assist callers who require assistance in other languages without a dedicated phone line.<sup>245</sup>

Victoria Legal Aid and community legal centres also provide community legal education and training services. For example, Victoria Legal Aid's Settled and Safe project focuses on helping people from new and emerging communities improve their understanding of legal rights and responsibilities around family relationships, including family law, family violence and child protection. It includes training to increase settlement service providers' knowledge of family violence and Victorian legal responses to family violence. Victoria Legal Aid services are collaborating with settlement service providers to deliver legal information-sharing programs to new and emerging communities.<sup>246</sup>

Within courts, the duty lawyer scheme is an important source of legal assistance for intervention orders and family violence-related criminal matters. Duty lawyers attend courts on particular days to provide assistance to parties who do not have legal representation.<sup>247</sup> Victoria Legal Aid provides or arranges the delivery of duty lawyer services at all major metropolitan magistrates' courts and at most rural and regional magistrates' courts, though the level of service varies.<sup>248</sup> Community legal centres provide duty lawyer services in 29 magistrates' courts in Victoria. Private practitioners funded by Victoria Legal Aid also deliver duty lawyer services. Duty lawyers can represent clients in hearings or provide advice, information and referrals. In many cases Victoria Legal Aid will act for respondents and community legal centres for applicants, to avoid any conflicts of interest (generally, a lawyer cannot act for both parties to a dispute).<sup>249</sup>

Evidence from a number of sources suggests that legal representation can alleviate the burden felt by many applicants in FVIO proceedings.<sup>250</sup> In its 2006 review of family violence laws, the Victorian Law Reform Commission found:

Where applications for intervention orders are contested, legal advice and assistance can be particularly useful to applicants to prepare the case and present appropriate evidence for the hearing.<sup>251</sup>

More recently, applicants surveyed by the Loddon Campaspe Community Legal Centre said they felt safer and better informed and were more able to participate and be heard in the court process when represented by a good lawyer.<sup>252</sup> One survey respondent noted:

[M]y lawyer has been absolutely brilliant, she has bent over backwards, any question she didn't know she has found out, she has kept me informed, ringing me straight away, she has made everything easy, communicating by email ... I probably ask stupid questions all the time, but ... [s]he's very patient and understanding and takes the time to help me understand. You sort of feel empowered, you're understood and not in the dark anymore.<sup>253</sup>

Deakin University's *Landscapes of Violence* report on the experiences of victims of family violence in rural and regional Victoria found that the women consulted 'valued lawyers who listened to their concerns and requests, demonstrated empathy, and understood the impact of violence on their and their children's lives'.<sup>254</sup>

The value of independent legal advice for affected family members, even when police bring the application, was also raised with the Commission. Ms Cooney noted in her statement:

As the civil advocate is employed by Victoria police in their capacity as a solicitor, the relationship between the police member who initiates the [FVIO] application for an (informant) and the Civil Advocate is a client/lawyer relationship. The Civil Advocate appears on behalf of the informant ...

As the legislation allows for the police to seek an IVO independently from the wishes of the AFM [affected family member], it is always desirable for an AFM to be represented independently. Independent representation for all parties ensures that there is no confusion as to the position of the police applicant and the Civil Advocate, especially where this position contradicts that of the AFM.

Where the AFM has an independent lawyer this can help to clarify the situation, particularly where the police are seeking an IVO against the wishes of the AFM. If the AFM has an independent lawyer, the lawyer will sometimes appear in court for the AFM, and at other times will confine their assistance to taking instructions, providing advice, and communicating with the other parties on behalf of the AFM. When an application proceeds to a contested hearing and the AFM is supportive of an IVO, the AFM's lawyer, the civil advocate and the informant often work closely together in tasks such as the production of further and better particulars, and in determining who will question witnesses in the hearing.<sup>255</sup>

In some cases police will make the initial application on an affected family member's behalf but will not appear at any subsequent application to extend (or vary or withdraw) that application.<sup>256</sup> It was suggested to the Commission that providing independent legal support to the victim in such circumstances ensures they are fully informed about the substance of the order and what may need to occur in future should they wish to extend or vary it.<sup>257</sup>

The Commission was also informed that the necessity for independent legal advice for applicants whose application is brought by police is under-appreciated.<sup>258</sup> In her report Dr Gelb commented on the lower rate of representation for affected family members in police applications:

... while most applicants on private days are represented by duty lawyers, it appears that affected family members in police matters are not receiving additional legal representation, but are being deemed to be 'represented' by the police.<sup>259</sup>

Some victims of family violence reported negative experiences with lawyers. The Commission received evidence of some lawyers communicating and behaving dismissively and disrespectfully and being unduly suspicious of their client's claims or unduly pessimistic about their prospects of success.<sup>260</sup> Deakin University's study of survivors of family violence found:

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. Alita 'had lawyers before for family law but they weren't really interested in the family violence'. Likewise, Helen sensed that her lawyer 'wasn't really interested in what he was doing' and that 'he really didn't understand domestic violence'. 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. 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 ...

Sometimes lawyers did not recognise the harms associated with non-physical abuse, which could mean that they were reluctant to assist survivors.<sup>261</sup>

Ms 'Jones' gave the following evidence:

I have been very frustrated by the legal representation I have had, especially considering how expensive it is. I have found that I am constantly battling my legal representatives because they do not agree with the outcome that I want or think that I am being unreasonable ... It has seemed to me that even my own legal team would prefer to ignore the issue of family violence to negotiate on simpler terms for the custody arrangements. Now that I am more experienced with the process of the legal system, I would like to represent myself because I know my story better and I can no longer afford private legal representation. I find it very frustrating that I have to pay someone to talk about my personal life. However, I continue to experience that courts have a negative attitude towards self-represented parties. In an earlier mentions hearing, a Magistrate at the Magistrates' Court commented to me that 'everyone wants their 15 minutes'. I found this comment so demeaning. Speaking about my experience of family violence in court is not about getting my '15 minutes', but about making sure the details and history of my case are properly and accurately told.<sup>262</sup>

Throughout the hearing, the Magistrate and my ex-husband's barrister spoke to me in a belittling way. They were unnecessarily rude and insensitive. I felt that I was penalised for being confident and articulate, and the fact that I did not fit the Magistrate's preconceived idea of a victim of family violence.<sup>263</sup>

Women surveyed in the Deakin University study also commented on 'familiarity' within the legal community and the impact this can have on an applicant:

[A]ll the barristers are friends with each other, and all the magistrates are, and they're all really chummy with each other and it [is] 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>264</sup>

The Commission heard that cross-examination in both FVIO and in criminal proceedings can be traumatic for applicants/witnesses. In response to this, Ms Fatouros gave the following evidence:

The majority of defence practitioners are doing their best in the best interests of their client when they approach the very difficult task of cross-examining a victim, particularly a victim in a sexual assault case, family violence case and particularly if it's a child. I have not yet met a defence practitioner within my own practice area that I oversee, but also within the private profession at the Bar, who has said to me the task of cross-examining a child or a victim of a family violence or sexual offence, that it's a task they relish.<sup>265</sup>

Highly trained and skilled advocates know that it is in their client's best interest to approach the task of cross-examination in a focused, well-prepared, thoughtful way that is confined and goes just to the issues in dispute and that does not ... attack the credibility of the witness unless that is part of the case. Of course, attacks on credibility are always very sensitive and fraught and get raised often in this context. The credibility and demeanour of a witness is a relevant part of any criminal trial, but it should be done in a particular way and only where it is necessary to that particular defence.<sup>266</sup>

...

This is where the evidence provisions have actually been strengthened and there are specific provisions now, both recent and over the last five years, that go to particularly oppressive or improper or demeaning cross-examination or questioning, and there is a very significant role that both prosecutors and judges should play in holding practitioners accountable through those provisions. They have the power to do it and they should be doing it and they should be objecting more and intervening more, depending if it is the prosecutor or the judge. In my view, it sometimes doesn't happen as quickly or as readily as it should.<sup>267</sup>

The Commission notes that the *Evidence Act 2008 (Vic)* provides that the court may disallow improper questions or questioning put to a witness and must disallow such questions or questioning put to a 'vulnerable witness' in cross-examination. Improper questions or questioning include questions or sequences of questions that are misleading, confusing, unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or put to the witness in a manner or tone which is belittling, insulting or otherwise inappropriate, or which have no basis other than, for example, a racial, sexual or other stereotype.<sup>268</sup> A 'vulnerable witness' includes a child, a witness with a cognitive impairment, or a witness the court considers vulnerable having regard to the circumstances, including the nature of the proceeding, any relationship between the witness and any other party, or a relevant characteristic of the witness, including their gender or ethnic and cultural background. Victims of family violence may meet these criteria.<sup>269</sup>

A self-represented respondent in FVIO proceedings may not personally cross-examine an affected family member or protected person, a child, a family member of a party to the proceeding, or any other person who the court is satisfied has a cognitive impairment or otherwise requires protection. The only exception to this rule is if the person the respondent seeks to cross-examine is an adult and consents to being cross-examined and the court decides that the cross-examination will not have a harmful impact on that person.<sup>270</sup> Beyond this exception, a respondent must have a legal representative to conduct the cross-examination. If the respondent fails to obtain legal representation, the court must order Victoria Legal Aid to represent them. Additionally, if the person the respondent seeks to cross-examine is a self-represented applicant (other than Victoria Police) the court must order VLA to represent them (unless the applicant objects to being represented).<sup>271</sup>

The expense of legal advice is a common concern for applicants.<sup>272</sup> VLA applies eligibility criteria for ongoing legal representation in most cases. Relevant criteria include an individual's financial means, as well as the likelihood of success of their case.<sup>273</sup> At present, duty lawyers and/or VLA-funded lawyers provide assistance to applicants and respondents in the first mention of FVIO proceedings without considering their financial means. However, both parties will generally need to meet eligibility criteria to receive legal assistance for a contested hearing.<sup>274</sup> A May 2015 VLA board paper assessing demand for duty lawyer services in family violence matters stated:

At present, parties to an FVIO matter do not receive comparable or consistent access to the duty lawyer service across major courts in Victoria. At the Melbourne Court, a duty lawyer service is provided 44 percent of the time. However, at Dandenong, Frankston, Latrobe, Ringwood and Werribee, in contrast, the duty lawyer service is providing assistance in less than 30 percent of applications. FVIO duty lawyer services need not be provided at a level that ensures 100 percent service provision ... For those that do seek assistance from a duty lawyer service, though, the availability of that service should not be determined by the court at which the matter is listed. Access should correspond with need.<sup>275</sup>

Community legal centres offer a free alternative to VLA's services but generally only have the capacity to assist only a subset of clients who are in court for family violence proceedings, as demand for the duty lawyer service is at saturation point.<sup>276</sup> The Federation of Community Legal Centres' submission to the Commission noted, for example, that (at date of its submission), Gippsland Community Legal Service was only funded to provide a duty lawyer service at the Latrobe Valley Magistrates' Court, so that many other remote courts—such as Bairnsdale, Wonthaggi, Korumburra and Sale—did not provide duty lawyer representation, which 'significantly disadvantages those who live in rural areas who have matters listed at these courts'. Elsewhere, Goulburn Valley Community Legal Centre was able to provide a duty lawyer service one day per week at Shepparton and Seymour Magistrates' Courts and one day a fortnight at Cobram.

The Federation recommends adequate funding for duty lawyers for both applicants and respondents and noted its members would welcome the opportunity to offer representation at directions hearings and contests, as well as assisting affected family members with initial FVIO applications.<sup>277</sup>

The Commission heard that, even for those clients whose means exceed the upper limit for eligibility for legal aid funding, the cost of a lawyer is often prohibitive. Ms 'Jones' stated:

At the start of my legal proceedings, I was ineligible for legal aid because I had some savings in the bank ... I find it a sad irony that after stepping forward and negotiating through over 12 months of legal proceedings, the opportunity to have my case heard and finally determined by a Magistrate was out of reach [financially] ...<sup>278</sup>

In its 2006 review of family violence laws, the Victorian Law Reform Commission found:<sup>279</sup>

It is difficult to obtain legal assistance in family violence intervention order applications and many applicants are told that lawyers are unnecessary. The cost of legal assistance provided by private practitioners remains a significant barrier to many in the community.

The Commission's views on resourcing legal services are provided in 'The way forward' below.

## Challenges for the court

The Commission heard that the Magistrates' Court is confronting unprecedented demand pressures and that demand has increased faster than the system's response and has not been accompanied by a commensurate increase in funding.

### The increase in intervention order matters

Many of the problems litigants experience and many of the pressures the court workforce and the judiciary experience are in large part the consequence of growing demand. Between 2009–10 and 2013–14 the number of finalised applications for FVIOs in the Magistrates' Court increased by 34.5 per cent, from 26,124 to 35,147. In 2013–14 there were 52,777 affected family members and 29,987 respondents listed on original FVIOs.<sup>280</sup>

Demand is not evenly distributed among court venues. Information provided by the Magistrates' Court shows that headquarter magistrates' courts heard just over three-quarters of finalised FVIO proceedings between 2009–10 and 2013–14.<sup>281</sup> In contrast, in 2013–14, 19 magistrates' court venues recorded fewer than 100 FVIO matters each. Collectively, these venues make up around one-third of the state's magistrates' court venues but handled less than 1.5 per cent of FVIO proceedings in 2013–14.<sup>282</sup>

The increased volume of family violence matters in the Magistrates' Court is discussed further in Chapter 3.

Demand in areas of court business unrelated to family violence, including time consumed in determining straightforward or procedural matters, may also affect the court's ability to manage FVIO demands. These other areas of court business include adjudication and administration of traffic matters, including low-level offences such as driving a vehicle in a toll zone without registration; and straightforward interlocutory proceedings.

Taken together, these matters can constitute a significant proportion of court business.

The Commission notes that a range of other matters adjudicated by the Magistrates' Court can be heard and determined by judicial registrars, who are independent judicial decision makers appointed by the Governor in Council to assist the Magistrates' Court in a variety of matters that fall within the court's criminal and civil jurisdiction.<sup>283</sup> Under the *Magistrates' Court (Judicial Registrars) Rules 2015* (Vic) the Chief Magistrate has delegated authority to judicial registrars to determine certain classes of matters.<sup>284</sup> Judicial registrars may not currently determine proceedings under the Family Violence Protection Act.<sup>285</sup>

## Demand for duty lawyers

Legal service providers told the Commission that their duty lawyer services in particular are routinely overwhelmed by the demand for their services and are under-resourced to meet this demand, which adversely affects their capacity to provide tailored, comprehensive services to clients.<sup>286</sup>

Victoria Legal Aid submitted:

The pressure of demand for family violence legal services is more acute at some court locations. This is due to a number of factors including local law enforcement efforts by Victoria Police, geographic court boundaries and population growth. We recognise that access to legal assistance is not consistent across the state. We know that many people are missing out on legal services and that some services are so time challenged as to be sub-optimal.

Court observations have shown that duty lawyers in high volume courts have assisted up to 17 clients on a single day, selected from an even busier list with many other potential clients, not being seen or assisted in a meaningful way.<sup>287</sup>

On the basis of her observations of eight magistrates' court venues, Dr Gelb found:

[T]he most common service that was accessed was legal in nature. That is, many people (an average of 48 per cent of applicants and 57 per cent of respondents, or an average of 53 per cent overall) had some sort of private or legal aid representation, or representation by the local community legal centre. Not all parties, however, were represented, with enormous variation across the courts in the proportion of respondents represented, ranging from a very low 12 per cent in Dandenong to a high of 86 per cent in Geelong and at the Neighbourhood Justice Centre.<sup>288</sup>

Dr Gelb reported that hearings involving self-represented parties can take additional time:

Self-represented parties often struggle to keep up with court processes. Their matters tend to take additional court time as the magistrate has to explain both substantive (content) issues and more administrative (procedural) ones.<sup>289</sup>

There are numerous courts where only one duty lawyer is available. In busy magistrates' courts, even when there is more than one legal service operating on site, the sheer volume of matters means that some people cannot be represented or can be seen for only a few minutes.

Ms Sinclair, of Victoria Legal Aid told the Commission:

[T]he duty lawyer system, it's not broken, it just needs an investment of resources so that we are able to ... spend more time with clients. In courts that have smaller lists where we may only be advising five or six clients, we are able to spend more time with that client, ensure that we are providing advice, referrals, assistance, looking at other co-related matters. It's when those lists get bigger that we are just buckling under the demand ... So what happens is there's often a more abbreviated service ... if we were properly resourced, we would be able to see more clients who might benefit from a legal service, but also be able to address more of the specific issues, legal and other, that are experienced by that client ...<sup>290</sup>

Mr Casey of the Loddon Campaspe Community Legal Centre provided similar evidence:

[Y]ou have a process that's very much tailored towards expediency, that's tailored towards trying to get a huge churn through the courts, with very little resources, and a proper holistic approach would be a step back from that ... [and] would tailor each individual scenario to the needs of that individual victim ...

[The Court]'s a 2008 model vehicle that's actually suitable for purpose, but it's not being resourced, it hasn't got fuel in it, it has bald tyres, it's crashing and burning, so it's unsafe.<sup>291</sup>

The Commission notes that concerns about demand for, and undersupply of legal services are part of a broader discussion about the resourcing of legal services, which was noted in submissions and hearings. For example, the Australian Women Against Violence Alliance noted that the Productivity Commission's Access to Justice Arrangements Report had proposed additional funding of \$200 million a year was needed to ensure that legal services continue to meet the needs of the community.<sup>292</sup> In December 2013, the Commonwealth Government announced cuts to legal assistance services of over \$43 million over four years. That decision was substantially reversed in March 2015.<sup>293</sup> However, the Alliance noted 'there is still a need for additional funding from Federal and state and territory governments to implement the recommended funding allocation outlined by the Productivity Commission',<sup>294</sup> and significant concerns remain about the future funding of legal services, with substantial reductions forecast by the Commonwealth Government for 2017–18. The Alliance submitted:

It is important to continue to have specialist women's legal services, including Aboriginal and Torres Strait Islander women's legal services. Such services have a thorough understanding of the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. Such services are important for empowering and supporting women victims/survivors of violence. They provide a safe space for women and children and strongly support holding perpetrators to account. They also recognise the intersecting and compounding forms of disadvantage that women face for example, due to their sex; gender identity; sexual orientation or intersex status; race; disability; age; and/or social and/or economic disadvantage, which can significantly limit women's "full enjoyment of citizenship", including access to justice.

It is also important that victims/survivors of violence have a range of legal services from which to choose so they can exercise agency or, where there is a conflict of interest, there is another legal assistance service to offer assistance. There also needs to be separate and additional funding for civil law matters (including family law matters) and criminal matters as recommended by Australia's Productivity Commission. Such funding should not be taken from criminal law funding. Given the high number of domestic and family violence homicides in Australia referred to above, the loss of liberty and loss of life arguments which arise with respect to criminal law matters are just as pertinent in family law matters where domestic and/or family violence is present. The Commonwealth and State and Territory Governments should therefore adequately fund all legal assistance services and increase funding amounts to an adequate and sustainable level.<sup>295</sup>

The Commission notes that the 2015–16 State Budget allocated an additional \$3.3 million for legal assistance for one year.<sup>296</sup>

According to information provided by the Crime Statistics Agency, the number of services provided by Victoria Legal Aid where the primary matter was family violence-related has increased by 8.5 per cent between 2009–10 and 2013–14, and in the latter period amounted to 21,172 services: approximately half (10,610) of which were duty lawyer services.<sup>297</sup>

## Demand for court-based service providers

Like legal services, other service providers based in courts reported an acute need for their services and difficulty meeting demand.<sup>298</sup> Court Network submitted that women found the court process complex and did not feel properly informed about what was happening.

... people attending court for family violence matters have limited information about, and are bewildered by court processes. This is compounded by long waiting times for their court appearance, feeling scared and unsafe, the pressures of other demands such as fear of losing their home, picking up children from school, and their own health needs.<sup>299</sup>

By assisting court users at the outset, for example in understanding forms and processes, Court Networkers and other service providers can improve the efficiency of courts. Women told the Commission they greatly valued the presence of their specialist family violence worker at court—both their support as well as their advocacy services.<sup>300</sup> However, this support is not universally available. For example, Eastern Domestic Violence Service identified legal assistance as a significant gap.

Women leaving violent partners/ex partners (or other family members) often have complex legal needs, including negotiating time with children, responsibility for debt, division of property, tenancy and immigration status and obtaining court orders. Some women also require legal advice in relation to criminal matters. Our DVAs [Domestic Violence Advocates] spend a considerable amount of time arranging and attending legal appointments with their clients. It is not unusual after waiting for and attending such appointments that the organisation approached refuses or is unable to assist.<sup>301</sup>

Currently the Victorian Government funds four specialist family violence services to provide non-legal court-based support at the Ballarat and Heidelberg courts.<sup>302</sup>

In addition to the four services specifically funded for court work, other specialist family violence services told the Commission that they attend their local Magistrates' Court as part of their case-management role.<sup>303</sup>

Court Network also provides a free court support service delivered by trained volunteers who provide confidential support, information and referral to all court users, including applicants, respondents, victims, witnesses and defendants, and their families and friends who attend with them.<sup>304</sup> It operates in 18 Magistrates' Courts.<sup>305</sup> Of the people assisted by Court Network in 2013–14, 32 per cent were involved in family violence matters<sup>306</sup> although the submission notes that for many Networkers, family violence matters can account for between 80 and 100 per cent of their time.<sup>307</sup>

A number of submissions commended the Womens Lawyers Workers Project, funded by the Legal Services Board, now run by Women's Legal Service Victoria, called LINK Outreach.<sup>308</sup> This service enables women to access a lawyer via Skype for initial legal advice and referral. It was noted that this project allows a family violence caseworker to attend the appointment with the woman's permission. It was submitted that the external evaluation of this project found it to be effective in reaching and supporting women who have experienced family violence in rural and metropolitan areas, as well as increasing the capacity of specialist family violence practitioners to support women to navigate legal systems. Berry Street submitted that '[f]or rural women, where they have been "conflicted out" of the only legal practice in their area, the Link Outreach service has been vital'.<sup>309</sup>

A number of women involved in court processes may not be involved with specialist family violence services, particularly if there was no police involvement or L17 referral. Court is a point at which links can be made between a victim and specialist support services. In this regard, Court Network and others have a key role to play. This referral into the system will also be improved if there are both clearer intake points and capacity to adequately respond to demand.

In recognition of the importance of supporting women during the court process, the Department of Health and Human Services has funded Court Network to pilot specific training in family violence for volunteer Networkers at the Sunshine court with around 88 women expected to be assisted by June 2016.<sup>310</sup> A training module will also be developed for broader rollout, subject to the outcome of the pilot. One element of the pilot is to strengthen the referral pathways with specialist family violence services. This will be particularly useful for those women who have sought an FVIO without police intervention, and as such, would not have been referred to services through the L17 pathway.

At least one specialist family violence agency proposed that they be funded for lawyers to provide women with a range of services, such as immediate legal advice during intake and beyond, including preparing and representing the women at both interim and contested order hearings assistance with the Family Court, Children's Court, VOCAT and the Immigration Review Board, as required.<sup>311</sup>

## Court infrastructure

A consistent theme in evidence before the Commission concerned the need for improvements to both 'hard' infrastructure, including technology, and 'soft' infrastructure such as court listing and information-sharing practices at the Magistrates' Court.

### Information technology systems

It is widely acknowledged, including by the Magistrates' Court itself, that the court's IT systems, in particular Courtlink, are outmoded.<sup>312</sup>

Courtlink was introduced in the 1980s and remains the court's primary repository of information about court matters, including parties' details and hearing dates. It is used by registry staff, magistrates' clerks and other court staff. The Magistrates' Court and the Children's Court informed the Commission:

Courtlink is the court record and case management system for MCV, CCV and VOCAT. Courtlink was developed and deployed in the 1980's and currently handles in excess of 300,000 cases and more than one million transactions each year. Courtlink is described as a 'legacy system' for good reason. It is out-dated, inadequate and has not evolved to reflect the increased complexity and breadth of the courts' caseload nor the massive increase in the volume of cases each court is now required to manage. This creates significant operational and organisational risk and heavily impacts upon the courts ability to develop and deliver a modern, integrated service delivery model. There are real risks to the stability of Courtlink.

The Platypus system (LEX) is a system which comprises the CCV's Family Division case management system for child protection matters, as well as providing the client databases for criminal and family violence support services in the MCV. The major barriers created by current technology infrastructure and functionality include:

- Lack of visibility for cases across all divisions of the courts. For example, a name search of the criminal database of Courtlink will return results only for that division. There is no ability to see related cases which may be listed in the Children's Court, or to see related intervention order matters or VOCAT applications without undertaking a separate searches [sic] in each of those separate databases ...
- The difficulty of updating and upgrading these systems. Upgrades and program changes to reflect legislative change and to enhance the courts' capacity to efficiently manage caseload are complex, expensive and time-consuming.

- Increasingly, as these [systems] age, reliability and performance are being compromised as they struggle to cope with the growth in caseload, users, and new changes, which impacts the courts' daily business.
- While data links between Courtlink and other justice systems do exist, these links are unsophisticated and do not provide the full range of the information that needs to be, and should be, transmitted between agencies.
- The limitations of these system [have] necessitated many manual 'work-arounds' to fill gaps in system capacity to meet modern business requirements. Invariably, these measures are comparatively inefficient and they increase the overall cost of administering not just family violence cases but all court cases.
- The modern demand for data to support the operational and planning requirements of the Court to respond to the justice needs of the community cannot be adequately met.<sup>313</sup>

As noted by Deputy Chief Magistrate Broughton:

[C]ourt events are rich opportunities for intervention and compliance and accountability. Our ability to enrich that opportunity at court relies upon being able to have the appropriate information before the judicial officer who is presiding on that occasion. So to be able to identify that it is a family violence related case, to be informed ... that there are indeed other charges pending of a similar nature, that there might be warrants outstanding in relation to the individual if he fails to turn up at a court event, these are really, really rich and missed opportunities, in my view, at the moment because the system doesn't facilitate that level of information sharing to be available before the judicial officer.<sup>314</sup>

The Commission heard that these constraints compound the inadequacy of resources to meet existing caseloads, since staff must engage in a high volume of manual processing tasks. One example provided in the Magistrates' Court of Victoria and Children's Court of Victoria submission involves the requirement that courts fax intervention orders to police stations for service: the Commission was told that tasks such as this could be automated with an appropriate technology platform.<sup>315</sup>

The Commission understands that substantial proportions of the court's time and resources are consumed by the management of cases.<sup>316</sup> Much of that work involves manual processing and data entry related to case management.

Family violence intervention order application materials and accompanying documents are stored in a physical file. If the court determines that the 'proper venue' for the matter to be heard is different from the venue at which the application was made, the physical file must be copied and transferred to the new venue, which entails manual processing work at both venues.<sup>317</sup> Other areas that can involve family violence, such as VOCAT, and in civil and criminal matters lodgment of claims, also rely on manual processes.

The Commission heard that, in relation to criminal matters, improvements in recent years in communications between LEAP (the Victoria Police database) and Courtlink mean that some information relating to any accompanying criminal charges is automatically transferred from the police to the court database.<sup>318</sup> However, data linkage remains incomplete and some manual processes persist.

Different registries manage data entry demands in different ways. Court staff, including registrars, must divide their time between administration and case management. Some registries remain open on days when the court is not sitting in order to deal with the administrative backlog.

## Listing practices

As noted in 'Attending court' above, at present most magistrates' courts manage long court lists by requiring that all parties arrive at the beginning of the court day, and then hearing each case in turn. The Commission was told this leads to long waiting times for parties (who might be accompanied by children) and heightens the risk of confrontations or safety concerns in court. It was suggested that staggering court lists—that is, requiring the various parties to arrive at different times throughout the day—could be a potential solution. However, it was also noted that this can cause greater complexity and delays, partly because it is difficult to predetermine how much time it will take to prepare and hear particular matters, and partly because court staff do not know whether both affected family members and respondents will appear, so that an adjournment may be necessary.<sup>319</sup>

## Coordination meetings

The Commission was provided with the Magistrates' Court of Victoria's *Family Violence Court Division Operating Procedures*, which provides guidance on the conduct of coordination meetings in the Family Violence Court Divisions of the Ballarat and Heidelberg courts. The operating procedures describe the purpose of such meetings thus:

[T]o ensure that representatives of key agencies supporting the operating of the daily list share a sufficient level of information relating to proceedings to increase the safety of aggrieved family members, and improve efficiency in the management of the list ...

[T]he coordination meeting formalises communication about the daily list, and demonstrates the Court's commitment to meeting the expectations of the Victorian Government regarding interagency collaboration and integration in responding to family violence.<sup>320</sup>

The procedures recommend that meetings be attended by a number of individuals:

- ▷ registrar/s
- ▷ bench clerk/s
- ▷ applicant and respondent support workers
- ▷ a Victoria Police prosecutor and court liaison officer (or the civil advocate/police lawyer)
- ▷ duty solicitors from Victoria Legal Aid and community legal centres.<sup>321</sup>

In order to prevent accidental disclosure of information to unauthorised parties, the guidelines provide that nobody else should attend the meetings, although the registrar should brief the sitting magistrate on any procedural or practical matters arising from the coordination meeting before the first hearing of the day.

Coordination meetings also occur at other courts (beyond Ballarat and Heidelberg). During visits to magistrates' courts throughout Victoria the Commission observed several coordination meetings—usually held before the court's first sitting on family violence list days and sometimes subsequently throughout the day. The Commission was informed that these meetings are not always routinely held.<sup>322</sup> Risk assessments are sometimes completed by applicant workers for triaging purposes, but these are not usually provided to magistrates.<sup>323</sup>

In its March 2015 report titled *Opportunities for Early Intervention: bringing perpetrators of family violence into view*, the Centre for Innovative Justice notes the Western Australian practice of conducting 'pre-court reviews' attended by the sitting magistrate, the prosecutor, defence legal services, and other relevant agencies. The CIJ explains:

During these meetings, the progress of an offender is discussed so that the Magistrate is aware of any issues affecting his engagement in a behaviour change program, for example. Participants are careful not to discuss any matter which may jeopardise the safety of victims, or prejudice a fair hearing or sentencing at a later date.

The value of these meetings then translates to the interaction between the Magistrate and the offender when in court. The CIJ heard that offenders engage more readily when it is clear that the Magistrate is already aware of their circumstances and knows specific details of their lives, such as the names and ages of their children ... The CIJ heard this 'choreographed' exchange leads to offenders feeling more accountable to the court as they know that the same Magistrate will hear of any non-compliance ...<sup>324</sup>

### **Risk assessment**

The concept of risk assessment and management is considered in Chapter 6. The Commission understands that the capacity of court staff to assess and respond to immediate safety concerns for court users affected by family violence may be hindered by demand pressures. In Judge Gray's report into the death of Luke Batty it was recommended that the Magistrates' Court of Victoria:

- ▷ ensure that all staff receive training in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) and that external service providers working within the courts make use of the CRAF where appropriate
- ▷ simplify the FVIO1 information form and integrate a CRAF-based checklist for applicants to complete when making an FVIO application
- ▷ introduce training for registrars who interview applicants and prepare FVIO documentation, to ensure that the CRAF is applied and risks are identified and included in the application for an intervention order
- ▷ ensure that applicant support workers complete the CRAF with the affected family member in family violence intervention order cases.<sup>325</sup>

In response to Judge Gray's findings, the Magistrates' Court noted that it was incorporating elements of the CRAF into the application materials to ensure easier identification of risk and safety concerns. It also noted that family violence registrars have undertaken a CRAF training session, and that further specialist training is planned; and that all applicant support workers complete the CRAF with affected family members as part of their assessment.

As noted above, during the Commission, Court Network also began upgrading the service its workers provide at Sunshine Magistrates' Court to include risk assessments and referrals to appropriate services.<sup>326</sup>

### **Information sharing between courts and other parts of the family violence system**

The Commission heard that there are limitations on information sharing between the Magistrates' Court, the Children's Court and other parts of the family violence system. Child protection workers told the Commission that better feedback loops with the courts were necessary, and that the lack of up-to-date information on FVIOs, including when they are varied or breached, made it difficult to engage in safety planning for women and children.<sup>327</sup>

Ms Karen Field, a Specialist Family Violence Service Registrar at the Sunshine Magistrates' Court, told the Commission that:

There should be better systems for sharing information between the Magistrates' Court and other agencies, such as the Department of Human Services, Corrections and Victoria Police, and also the Family Court, Federal Circuit Court and Children's Court. We can't access any information held by these agencies which would no doubt be relevant to an intervention order application. On the other hand, at Sunshine, we are constantly processing requests from these agencies for information about intervention orders.<sup>328</sup>

Under the *Magistrates' Court Act 1989* (Vic), non-parties to an intervention order proceeding (for example, government agencies) are entitled to inspect that part of the Magistrates' Court register that contains a final order made in the proceeding (subject to there not being a suppression order in place and payment of the prescribed fee).<sup>329</sup> On the face of it, any non-party should be able to obtain copies of final FVIOs by going through an administrative process only.

However, according to the Magistrates' Court's Family Violence Operating Procedures, it has received advice that it is prohibited from allowing access to final FVIOs pursuant to Part 8 of the Family Violence Protection Act.<sup>330</sup> This Part prohibits the publication of details of proceedings or orders that may lead to the identification of a person involved in an intervention order proceeding, unless the Magistrates' Court otherwise orders or an adult victim consents to the publication.<sup>331</sup> The operating procedures provide that, as a matter of best practice, registrars should always put the matter before a magistrate who will make a determination under section 169 of the Family Violence Protection Act regarding whether to allow the release.<sup>332</sup>

This means that any person that is not a party to the proceeding (such as, for example, the Department of Health and Human Services is required to submit a formal application, and have an order made by a magistrate, to obtain access to a final FVIO.

Further, the operating procedures provide that non-parties are not entitled to inspect any additional information that relates to the application or any interim FVIOs.<sup>333</sup>

A similar process exists in relation to accessing final orders in the Children's Court: non-parties to proceedings must obtain approval from the magistrate before they can inspect final orders made in the Children's Court.<sup>334</sup> Further, access to court files will not be provided in any circumstances unless so ordered by the President or a magistrate.<sup>335</sup>

## The way forward

Family violence intervention orders made in magistrates' courts are an important way of keeping victims safe and preventing perpetrators from continuing their use of violence. Magistrates' courts also keep perpetrators accountable by convicting and sentencing offenders for family violence-related offences. In discussing the way forward the Commission focuses mainly on the Magistrates' Court's civil jurisdiction but also makes some recommendations for changes to the way it exercises its criminal and other jurisdictions.

The role of the Magistrates' Court in making intervention orders is different from the traditional role of courts in deciding civil and criminal cases. In intervention order proceedings, magistrates do not simply determine the facts about past events and apply the law to those facts. They have to make decisions about the extent of ongoing risk, which may profoundly affect the victim's future safety.

Court staff and magistrates must also manage the fact that parties come to the court at a time of crisis. Applicants are often distraught and fearful. They may have found the courage to report violence after it has been occurring for a long time and still be at risk. They may fear that the violence will escalate because they have reported it and that the perpetrator will attack or harass them while they are at court or afterwards. Perpetrators may be concerned that if they are excluded from the family home they will have nowhere to live and may not be able to see their children. Both parties are likely to have very limited understanding of court processes and may not have a lawyer to advise or represent them.

As well as dealing with these issues, magistrates must make decisions about whether the alleged acts of violence occurred and must act fairly and impartially. When they determine the orders that are necessary to keep a victim safe, they are reliant on processes and services that are the responsibility of other agencies, for example police who apply for intervention orders and prosecute breaches of orders, and services aimed at preventing perpetrators acting violently in the future.

We are increasingly seeing models of courts that take a more problem-solving or therapeutic approach in deciding some types of cases. Over the past decade courts in the United States, Canada and to some extent Australia, have moved towards providing greater support to witnesses in criminal cases who have suffered traumatic experiences (for example, witnesses in sexual offence cases) and to some categories of defendants in criminal cases, including those who have complex needs who may repeatedly re-offend unless these needs are addressed (for example, people with an intellectual disability or acquired brain injury). These changes are examples of a 'therapeutic justice' approach, which emphasises the importance of solving the problems that bring people before court. Another example is the establishment of specialist sexual offence courts<sup>336</sup> in some jurisdictions, which seek to provide a more supportive process for complainants in sexual offence cases, without detracting from the need to provide a fair trial for people accused of sexual assault.

In Victoria the establishment of the Magistrates' Court Family Violence Division, and Specialist Family Violence Services Courts, also reflects the increasing influence of therapeutic and problem solving approaches. The Neighbourhood Justice Centre is another example of this approach. These innovations have provided support to affected family members and enabled magistrates to engage with perpetrators, to emphasise the effects of what the perpetrator has done, and to require them to participate in programs to address their behaviour.<sup>337</sup> Ensuring that these perpetrators are referred to appropriate interventions that may prevent them from being violent in the future is not inconsistent with the goal of ensuring they are held accountable for their wrongdoing. The Commission notes that service providers, such as Women's Legal Service Victoria, that are concerned primarily with the safety of victims of family violence, advocate the use of a therapeutic model where either the victim or the perpetrator presents with complex needs.<sup>338</sup>

So far, the Magistrates' Court adoption of a more therapeutic approach has largely focused on making support services available at the court or to referring parties to services outside the court. The concept of therapeutic justice has had much less influence on case-management and listing processes, which continue to follow a relatively traditional path, except perhaps in the NJC. The high volume of family violence cases, out-of-date information technology that requires court staff to spend a large amount of time on manual entry of data and the lack of appropriately skilled court staff, has made it difficult to change the ways in which family violence cases are managed and listed, particularly outside the specialist and divisional courts.

It is the Commission's view that the Magistrates' Court should, so far as possible, take a problem-solving and therapeutic approach to exercising its FVIO jurisdiction. The Commission recommends that as part of the move towards a more therapeutic approach, all headquarter courts should be specialist courts with the same powers and features as Family Violence Divisional Courts. If adequately funded, the creation of specialist courts at all headquarter courts will create the opportunity to revise all aspects of court process and procedure. The aim should be to ensure that high levels of demand are managed carefully, cognisant of the risk to victims. Such courts must also be safe for victims, accessible and supportive for those who use them and have the powers to assist perpetrators to change their behaviour.

The Commission's proposals and recommendations in this section are directed to ensuring that magistrates' courts are set up for success in delivering a therapeutic model. The Commission recommends a number of strategies to support both specialist and other magistrates' courts to make the transition from a reactive and piecemeal approach to managing FVIOs, towards a court culture and practice that supports positive and effective interventions for affected family members and perpetrators.

The Commission recognises of course that courts are independent entities that determine their own models of administration. Our recommendations to the Magistrates' Court and Children's Court should be read in that light. Further, it would be desirable for the Department of Justice and Regulation to consult with the courts on any legislative changes required by our recommendations.

The Commission notes that some of these recommendations—for example, relating to remote facilities and the transfer of proceedings to headquarter courts—may raise distinct complexities in relation to children. We therefore have not prescribed the application of all of our recommendations to the Children's Court. However, we encourage the Children's Court to consider whether and to what extent they might adopt our recommendations.

## A specialist and therapeutic approach

It is not acceptable that some victims and perpetrators in FVIO matters have the benefit of specialised magistrates and support people, while other parties do not. All FVIOs should be heard in courts that have the therapeutic features of the FVCD and specialist courts.

Such courts should also have the capacity to deal with criminal, civil, crime compensation and other matters at the same time as they deal with FVIO proceedings. As things stand, it is necessary for some affected family members to re-tell their story in multiple forums or proceedings. For example, the victim may have to seek an FVIO to exclude the perpetrator from the home, and give evidence against the perpetrator in criminal proceedings for breach of an earlier order.

As Judge Gray observed in his findings in the inquest into the death of Luke Batty '[T]his case has demonstrated that the response by the Magistrates' Court to family violence is optimal when there is an alignment between criminal cases and family violence cases affecting the same parties'. Judge Gray described the specialist courts as constituting a 'sound model' that 'ensures integration of relevant jurisdictions'.<sup>339</sup>

A victim may also have to give evidence to support an application for a parenting order under the Commonwealth Family Law Act. Again, so far as possible victims should be able to have all their legal issues determined in the same court.

Expanding the number of courts with the power to determine a broader range of issues in the same proceedings is a key means of moving towards a more unified approach. Magistrates should be encouraged and trained to deal with criminal, civil, crime compensation, and, subject to the restrictions in the *Family Law Act 1975* (Cth), family law matters, at the same time as they deal with FVIO proceedings.

The Commission also notes the 'fast-tracking' model for conducting criminal family violence proceedings that began at Dandenong Magistrates' Court. If the model continues to prove successful, it may be an essential aspect of combatting delays.<sup>340</sup> We suggest that it be evaluated as soon as possible and, pending any serious difficulties identified by that evaluation, that other suitable sites for the model be identified.

The Victorian Government is in the process of appointing specialist family violence registrars and applicant and respondent workers to all headquarter magistrates' courts in 2016.<sup>341</sup> The government has also accepted, in principle, Judge Gray's recommendation that key features of the FVCD model be expanded statewide.

The Commission welcomes these commitments. Although we do not consider it feasible to introduce these features to all magistrates' court venues (some noted above will only deal with a small number of FVIO matters each year), we recommend:

- ▷ first, the expansion of key features of the Family Violence Court Division to all headquarter courts (presently Ballarat, Bendigo, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Melbourne, Latrobe Valley, Ringwood, Shepparton and Sunshine) and other specialist family violence courts (presently Moorabbin and Werribee), effectively expanding the number of specialist courts
- ▷ second and subsequently, procedural changes to ensure that a greater volume of family violence matters can be and are transferred to these courts as a matter of course (subject to exceptional circumstances which outweigh the benefit of transferring proceedings in particular matters).

The transfer of a greater volume of matters to headquarter courts will require practical changes, to ensure that all people affected by family violence receive the support and services they require. People living in rural and regional areas may not have access to a headquarter court. For that reason, we envisage that they should be able to appear in FVIO proceedings in a headquarter court through the use of remote witness facilities, located either in the court venue nearest to them, or in places close to where they live, for example, at the premises of specialist service providers, legal services or health-care providers. For those who use courts in regional and rural Victoria, the improvement of remote facilities for conducting proceedings, as well as for use in receiving legal advice and support from specialist workers, is an essential prerequisite of transferring matters from these regional and rural courts to headquarter courts. We expand on these remarks below under 'Better use of remote facilities'.

Because magistrates will be dealing with criminal proceedings related to FVIOs, the Commission recommends that applicant and respondent support workers in specialist family violence courts be able to assist parties in proceedings for FVIO contraventions, as well as in FVIO proceedings.

The use of headquarter courts to hear the vast majority of family violence matters will also require legislative amendments. For example, the 'proper venue' provisions will need to be revised to ensure that proceedings are usually initiated in or transferred, as a matter of course, to headquarter courts. The amendment will need to provide safeguards to ensure that the decision to transfer proceedings is made in view of the circumstances, safety and convenience of the parties and the interests of justice in a particular case. In particular, emergency interim orders may need to be made at the court at which a party has applied.

Other legislative impediments to the expansion of access to the specialist courts will also need to be reviewed. The Commission notes, for example, that the effect of section 133 of the Family Violence Protection Act is that the Secretary of the Department of Justice and Regulation must authorise the engagement of the individual who is to conduct an interview and prepare a report regarding a respondent's eligibility for counselling and the relevant counselling program. The Magistrates' Court of Victoria and Children's Court of Victoria submission reported that this section made it difficult to appoint respondent workers quickly.<sup>342</sup> It argued that the section is not necessary and is inconsistent with the establishment of Court Services Victoria as an independent body of the Department of Justice and Regulation. The Commission encourages the Victorian Government to take account of this particular consideration when contemplating any necessary regulatory and legislative changes. Further, as a greater volume of matters are transferred to headquarter courts, staffing and resourcing will need to be carefully monitored to ensure that the headquarter courts are capable of taking on a greater share of matters.

These recommendations are not intended to limit changes that respond to the needs of people affected by family violence. Decisions about demand management in particular courts or regions are properly made by the courts and Court Services Victoria in light of changing variables, among them the needs of the local population and the relative proximity of alternative court venues. For example, the Commission heard that there is both need and potential for the Moe Magistrates' Court to be redeveloped as a FVCD court.<sup>343</sup> The Commission encourages the Magistrates' Court of Victoria and the Victorian Government to consider this proposal, as it should other similar proposals elsewhere. In some cases, it may also be desirable for some specialist family violence courts to operate at other courts on a 'circuit' basis (so that judicial and specialist staff visit other courts on days set aside for family violence proceedings).

The capacity of specialist courts to hear related aspects of a case—criminal, civil, family law, compensation and other matters—must be fully utilised. Police who are applying for intervention orders may have limited capacity to advise affected family members on related legal issues, for example family law matters. This underscores the need for the affected family member to have independent legal representation, even in police-initiated intervention order proceedings.

In its response to Judge Gray's findings following the death of Luke Batty, the Victorian Government noted plans for the Department of Justice and Regulation to undertake an evaluation of the features of the FVCD.<sup>344</sup> This is a welcome development. While in the Commission's view there are compelling indications of its effectiveness, and very widespread support for the division, it is sensible that the expansion of the model should be accompanied by an evaluation of its features to identify any areas for improvement.

## Recommendation 60

The Victorian Government ensure that all Magistrates' Courts of Victoria headquarter courts and specialist family violence courts have the functions of Family Violence Court Division courts [within two years]. These courts should therefore have:

- ▷ specialist magistrates, registrars, applicant and respondent workers to assist parties in applications for family violence intervention orders and any subsequent contravention proceedings
- ▷ dedicated police prosecutors and civil advocates
- ▷ facilities for access to specialist family violence service providers and legal representation for applicants and respondents
- ▷ power to make counselling orders under Part 5 of the *Family Violence Protection Act 2008* (Vic)
- ▷ remote witness facilities for applicants
- ▷ the jurisdictional powers of the Family Violence Court Division under section 41 of the *Magistrates' Court Act 1989* (Vic), including the power to make parenting and property orders under the *Family Law Act 1975* (Cth).

## Recommendation 61

The Victorian Government legislate to ensure that, subject to exceptional circumstances and the interests of the parties, all family violence matters are heard and determined in specialist family violence courts [within five years].

### Managing demand

The high volume of FVIO cases in some magistrates' courts has affected the capacity of court staff, registrars and magistrates to take a more therapeutic approach to family violence. The Commission understands that demand in some courts has increased to the extent that managing that demand has become an end in itself and something that requires substantial planning, ingenuity and coordination. In some courts a primary focus on managing demand has affected how services are administered. It is evident that different courts have devised piecemeal innovations at different times in response to increased demand. This has led to a degree of incoherence across the court system, overlap between the roles of different court staff within one court, or inconsistency regarding the role of particular court staff positions across different courts.

This leads to further inefficiency because the time of particular staff—for example, the duty lawyer, or the Court Networker—is taken up explaining the 'division of labour' to the person who has come to court. (Equally, as things presently stand this is part of the value of the duty lawyer or Court Networker: we note Judge Gray's remarks about the absence of a central person to guide the applicant through the process and manage their expectations—in many cases, the duty lawyer's role, for example, may be to do just that.)

The courts will not be well placed to adopt and consolidate a therapeutic approach unless demand is effectively managed. Magistrates are much more likely to make appropriate, tailored and effective FVIOs when they are supported by adequate resources and systems that are fit for purpose. The Commission makes a number of suggestions and recommendations directed to enhancing the efficiency and responsiveness of the court to family violence cases. These recommendations are intended to apply to all courts prior to the establishment of specialist family violence courts at headquarter courts. They will also be rolled out to manage demand in headquarter courts when they become specialist courts.

### Making better use of the time and skills of the magistracy

Infringements and minor civil disputes are high-volume matters that form a large segment of court business yet are often very straightforward. An in-person hearing might not be needed in many cases. Similarly, some interlocutory disputes might not require in-person hearings. More efficient management of matters such as these might allow for existing resources to be better directed to FVIO matters.

The Magistrates' Court might consider expanding the range of (non-family violence) matters determined 'on the papers' and establishing a process for determining 'on the papers' matters online. Such processes would, of course, provide for in person hearing where necessary.

A further option would be to delegate magistrates' powers to deal with some family violence matters, or some classes of matters (for example, granting adjournments, or making interim orders and/or substituted service orders) to judicial registrars. The Commission accepts that there are circumstances where it may be appropriate for a magistrate to make these decisions. However, we are confident that judicial registrars have the capacity to determine whether a particular matter requires the involvement of a magistrate.

A further option would be to transfer a larger volume of family violence matters to the Neighbourhood Justice Centre. This would be consistent with the Commission's view that a therapeutic justice approach should be adopted in determining FVIO applications. We note that, pursuant to the Magistrates' Court Act, the NJC's jurisdiction is limited to a particular district,<sup>345</sup> so that a notice in the Victorian Government Gazette would be required to expand its sphere of operation. This decision would have to be made in consultation with the NJC, so that the desirable features of the NJC model would continue to apply.

Finally, the Commission accepts that the court's capacity to manage family violence matters is compromised by the volume of cases in areas other than family violence. In particular, low-level penalties and traffic matters consume substantial time and resources. We understand that progress in this direction is ongoing, and note for example that the Infringements Court (a venue of the Magistrates' Court) deals with a significant number of matters and that the *Fines Reform Act 2014* (Vic) may help reduce the number of fine-related matters that come to the Magistrates' Court. Nonetheless, the Commission recommends that the Victorian Government conduct a review to consider further ways of increasing the capacity of the Magistrates' Court to focus on family violence matters by managing high-volume but straightforward matters more efficiently.

## Recommendation 62

The Victorian Government enact legislation and take other steps as necessary to support the capacity of the Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) to grant family violence intervention orders speedily and with due regard to the interests of justice and the safety of affected family members.

The Victorian Government consider [within two years]:

- ▷ transferring some of the jurisdiction of the Magistrates' Court of Victoria to another forum— for example, fines and traffic infringements
- ▷ expanding the range of matters which can be determined on the papers— that is, without an in-person hearing
- ▷ funding the appointment of a greater number of judicial registrars to deal with certain matters or classes of matters.

The Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) consider whether the caseload of magistrates could be better managed [within two years] by:

- ▷ re-assigning some family violence intervention order applications currently heard at the Melbourne Magistrates' Court to the Neighbourhood Justice Centre
- ▷ delegating authority to judicial registrars to deal with certain matters or classes of matters under the *Family Violence Protection Act 2008* (Vic)—for example, allowing them to grant adjournments or make interim orders and/or substituted service orders

The Victorian Government should take any necessary action to implement these recommendations if the Magistrates' Court of Victoria advises this is desirable.

### Upgrading information technology systems

The continued use of an outmoded IT system that does not allow visibility across criminal, civil and family law systems (and non-legal systems) in respect of a single matter increases the burden on magistrates and court staff.<sup>346</sup> It requires magistrates to adjourn matters when all the material they require is not before them. It also puts people at risk and limits the potential benefits of other reforms.

An upgraded, fit-for-purpose IT system is an essential precursor to change. Such a system has the potential to support timely updating and sharing of information; collection and cross-correlation of reliable data on court use and performance, which can be used to measure and adapt court practice; and the provision of evidence, legal services and other supports to people in refuges or remote locations.

The Commission recommends that the Magistrates' Court and Children's Court move away from inefficient manual and paper-based processes towards electronic and online processes.

The courts should establish an 'e-registry' through which the core registry work is done online. The e-registry should allow online inquiries, initiation of proceedings, listing of hearings, upkeep of court files, lodgment of documents, notification of outcomes and other relevant processes. This should take place via a central online portal. Parties and police should have sufficient access to the portal so that police can transfer information directly into the online portal; and individuals, or legal services and registrars on their behalf, can submit documents online.<sup>347</sup>

Such changes may need to be supported by legislative and regulatory amendments if current laws and regulations prescribe paper-based processes (including fax) or do not permit electronic signatures. Additionally, as reliance on paper files diminishes, court protocols that prescribe processes for managing and keeping paper files will need to be amended.

Other jurisdictions have made the transition to digital case management: Western Australia and New South Wales have moved to paperless processes for a range of criminal and civil matters, and the ACT has recently purchased the Western Australian case management system.<sup>348</sup> The Commission also notes the piloting of the Neighbourhood Justice Centre's digital court coordination system. Ms Kerry Walker, the NJC's Director, explains that the system:

...connects the Magistrate and bench clerk with registry, lawyers, police, client services and the court user. In this way the clients are kept up to date with the status of their case and whether there is anything further they are required to do.<sup>349</sup>

We encourage the Magistrates' Court to investigate whether the NJC's system could serve as a model for, or for some aspects of, an 'e-registry'.

A move away from physical files to a centralised online portal means that a person can inquire about their case through any court. Consequently, there should be scope to centralise registry-related queries—for example, by developing a specialised workforce (whose work need not be carried out at a court venue) to field online and phone queries relating to procedural and filing matters.

The objective of these developments is faster, less labour-intensive court processes and court registries that are better able to provide information promptly to magistrates, legal practitioners, the police and others. An important benefit of this approach would be to free registry staff to provide more tailored assistance to parties consistent with the adoption of a more therapeutic approach in family violence matters. The workforce should be equipped to redirect its priorities, so changes to court processes and systems should be accompanied by training, recruiting and other efforts to reshape the court workforce, to enable it to focus on case management and judicial support rather than transactions, data entry and manual processes. Training of the court workforce is considered further in Chapter 40.

These developments must be of a piece with the general improvement of the court's IT systems. It is essential for the appropriate adjudication of FVIO proceedings, and criminal proceedings involving family violence, that judicial officers are aware of relevant parallel proceedings both within their court, and in other courts across the state and federally.

Unfortunately, persistent difficulties with IT in the justice system—in particular, the Integrated Courts Management System<sup>350</sup>—may have contributed to a circumspect approach to the improvement of courts' IT. However, there is no reason that a user-friendly, reliable, integrated IT platform for use by Victorian courts should be considered unachievable. The Commission believes it is an essential element in improving responses to family violence and must be a priority for government. This issue is considered further in Chapter 7. We also acknowledge that the Department of Justice and Regulation is undertaking a review of information-sharing needs and barriers across the justice system.<sup>351</sup> The Commission encourages the department to consider these observations as part of its review.

## Recommendation 63

The Magistrates' Court of Victoria (and the Children's Court of Victoria) consider establishing an 'e-registry' as a central online file-management portal and an offsite contact centre for managing registry-related queries [within five years].

### Managing lists

Managing court lists is an administrative process for determining when, and the sequence in which, cases will be heard. This affects the volume of cases heard by the magistrate and how long people will have to wait at court. Case management should also involve triage so that cases where an affected family member is at high risk of harm are given priority over cases with lower risk. A high volume of cases makes it difficult for registrars and court staff to manage this process. Different courts adopt different practices in triaging and managing court lists.

### Information sharing and risk management

The Commission encourages the Magistrates' Court of Victoria to consider comprehensive coordination meetings as a standard component of list management, involving not only legal practitioners but also, where relevant, non-legal service providers, applicant and respondent workers, registry staff and others.

The Commission recommends that the standards for coordination meetings set out in the *Family Violence Court Division Operating Procedures* provided to us by the Magistrates' Court should be adopted—and, where necessary, adapted (for example, if stipulated attendees are not deployed at a particular court venue)—for use in all courts where particular days and lists are set aside for the hearing of family violence-related matters.

There is also scope for improving and coordinating the risk assessment standards that court staff use to determine listing priorities.

The Commission supports Judge Gray's proposals in relation to risk assessment, noting his recommendations relating to a revised CRAF. Risk assessment is discussed in Chapter 6. In particular, the Commission recommends that prescribed organisations (including the courts) be required to have risk assessment practices consistent with the CRAF. Where practicable, service agreements with court-based service providers should also require that any risk assessments they complete are consistent with the revised CRAF.

It is important that registrars and other court staff have a clear sense of how and when they should apply their CRAF training. There are clear instances in the courts where this should occur: for example, registrars may apply their CRAF training in considering the urgency and salient features of a particular matter; applicant support workers should complete the CRAF when meeting applicants; and the triage meetings that occur at courts should take family violence risk factors into account in assessing how to prioritise and manage cases.

Questions arise in relation to whether magistrates should receive pertinent information yielded by coordination meetings and risk assessments. Although this can vary between cases, the general position of the Commission is that they should receive all relevant information where possible.

Some interested parties expressed concern about the potential danger to victims being exacerbated by respondents having access to such materials. The Magistrates' Court Family Violence Operating Procedures advise that while parties are entitled to inspect and receive a copy of any order made in FVIO proceedings:

The court is not required to enter information from the Information Form or other material into the court register. Accordingly, respondents are not entitled to inspect these documents as of right.

If a respondent seeks to access documents (other than orders), the registrar should put the application before a magistrate to determine whether those documents should be released.<sup>352</sup>

The Commission acknowledges that in such proceedings, there may be broader natural justice considerations that may compel a magistrate to provide a respondent or their legal representative with the risk assessment (such considerations may arise, for example, if a decision to make a particular order was influenced by the assessment). Further, there may be cases where the risk of violence is exacerbated by the provision of such information to the respondent. Any such risks in certain cases must be weighed against the broader risk of depriving magistrates of potentially pertinent information about the risk posed by the perpetrator. Accordingly, we suggest that in implementing this recommendation, the Victorian Government consider the views of the magistracy.

In the Commission's view, it would assist magistrates to determine the orders, if any, which should be made, if Victoria Police were required to provide a broader range of information in support of the application. As a standard practice, Victoria Police should provide to magistrates an affidavit attesting to the relevant features of a matter: in particular, whether there have been any prior FVIOs or L17s, whether there are prior or forthcoming criminal proceedings, whether the respondent is on bail (and if so, the conditions of bail), relevant risk factors relating to the current incident, and the orders sought by police. In addition, we recommend that registrars provide magistrates with a summary of the status of proceedings in other relevant jurisdictions—including, for example, the Federal Circuit Court, the Children's Court, the Family Court, the Victims of Crime Tribunal and the Victorian Civil and Administrative Tribunal.

The Commission notes that in some instances, police are already providing this information and that some of it will usually be provided as part of completing the application form. Our objective is to ensure that best practice is the general practice. We anticipate that better preparation of police applications will ensure that magistrates, and respondents against whom orders are sought, are fully informed from the outset, so that there are fewer adjournments, strike outs or requests for further and better particulars, and a better chance of a matter finalising at or soon after the first mention. We accept that in some cases this will impose a greater burden on police, and make recommendations that they be given more time to bring to court applications that have been the subject of a family violence safety notice.

Earlier in this chapter and in Chapter 7, we discuss the improvement of the court's IT platform—in particular, with a view to allowing searches to occur across courts to identify parallel proceedings involving particular parties. We expect that over time, these improvements will mean that the obligations that our recommendations impose on police and registrars become significantly easier to fulfil.

In addition to enhanced information sharing within the courts, the process for sharing information between courts and other parts of the family violence system should be much simpler and more accessible. Relevant agencies such as DHHS should not be required to seek a court order to obtain access to a final FVIO. They should also be able to access any additional information in the court's possession which is necessary to assess or manage risk to a person, such as risk assessments or interim FVIO.

The Commission's recommendation in relation to this issue is outlined in Chapter 7. In short, the Commission recommends that courts should be prescribed bodies under the proposed privacy regime in the Family Violence Protection Act, subject to some safeguards. This would confirm courts' ability to share information with another prescribed organisation without that organisation having to seek an order to gain access to the information in question.

## Recommendation 64

The Magistrates' Court of Victoria staff hold a daily coordination meeting before hearings begin in a family violence list [within 12 months]. The purpose of the meeting would be to give priority to high-risk cases, ensure that interpreters are available, liaise with legal representatives to manage conflicts, and liaise with applicant and respondent support workers.

## Recommendation 65

The Magistrates' Court of Victoria develop and implement a process [within two years] of equipping court staff to actively manage the family violence list, having regard to risk assessment and management factors, and provide magistrates the information the Commission recommends in this report.

## Recommendation 66

Victoria Police ensure that before applying for a family violence intervention order the relevant magistrate receives an affidavit (prepared by the police prosecutor or civil advocate) [by 31 December 2017] specifying:

- ▷ any previous family violence intervention orders relevant to the affected family member and respondent
- ▷ whether the respondent is on bail for any offence and the conditions of any such bail
- ▷ whether any previous family violence intervention orders have been breached
- ▷ whether there are previous or forthcoming criminal proceedings, and the status of any such proceedings
- ▷ whether there have been previous family violence incident reports (L17 forms) relating to the same parties
- ▷ relevant risk factors relating to the current incident—including a status update on any risk factors described in the L17 relating to the application
- ▷ the family violence intervention orders sought by police and whether the affected family member consents to those orders.

A Victoria Police representative—for example, the police prosecutor, a civil advocate or the family violence court liaison officer—should discuss the particulars of the affidavit with the affected family member before the hearing.

## Recommendation 67

The Magistrates' Court of Victoria registry, in all police-initiated applications for family violence intervention orders provide to the magistrate a summary indicating the status of any related proceedings in the Children's Court of Victoria (or vice-versa), the Family Court of Australia and/or Federal Circuit Court of Australia. If information is not available from other jurisdictions, this should be stated. In non-police initiated family violence intervention orders, the Magistrates' Court registry should also provide the information recommended to be provided by Victoria Police in an application initiated by it. The Magistrates' Court registry should also adopt a practice of providing risk assessments made by applicant and respondent support workers to magistrates as a matter of course [by 31 December 2017].

### Capping lists

One way of managing case volumes and enabling the court to be more responsive to parties is by 'capping' the number of matters that can be heard on family violence sitting days. This means setting a maximum number of matters, or matters of a particular kind, that the courts will hear on a particular day. The Magistrates' Court is moving in this direction.

After an extended period of consultation, discussion and design, the Broadmeadows Magistrates' Court was chosen as a site for testing the effectiveness of capping lists. In October 2015, Chief Magistrate Peter Lauritsen issued a practice direction requiring the number of FVIO applications heard in the Broadmeadows Magistrates' Court to be capped at 40 in a single daily list.<sup>353</sup> This includes primary applications and applications to revoke, vary or extend orders; it excludes urgent applications for interim FVIOs, which are allocated to a courtroom separate from the courtroom hearing the capped list.

In the practice direction, the Chief Magistrate noted:

In recent years, the number of applications for Intervention Orders under the Family Violence Protection Act 2008 has grown significantly. The ability of the Court, lawyers, police, support workers and other professionals to perform their respective roles has been compromised. Effective family violence outcomes require sufficient time for the Court to address the requirements of the Act and for lawyers, police, support workers and other professionals to conduct themselves in accordance with relevant standards ... The introduction of this process at Broadmeadows is the first stage. The impact of capped lists will be monitored and will inform the expansion of capping to other regions of the Court.<sup>354</sup>

The Commission endorses the Magistrates' Court's testing of 'capping' and encourages the court to consider expanding this approach to other suitable venues, acknowledging that different venues will have different needs, and a different volume and mixture of cases. One potential risk of capping—as the Magistrates' Court is aware—is the creation of delays for some litigants. In some cases, the strategy might need to be paired with the allotment of extra days for hearing family violence matters.

### Reducing court waiting times

One of the problems faced by affected family members and respondents is that they may have to wait many hours before their matter is called on the hearing day. To some extent this reflects the difficulty of managing lists when it is not clear whether or not parties (particularly perpetrators) will actually appear and the time that particular hearings will take is uncertain. There is a concern that the time of magistrates and lawyers will be wasted if hearings are scheduled for particular times and then have to be adjourned.

It is the Commission's view that a more therapeutic approach to family violence requires courts to consider ways of alleviating the stress and frustration that victims and respondents experience because of indeterminate waiting periods. One possibility would be to stagger lists so that parties are advised that their matter will be heard in either the morning or the afternoon. There may also be technological solutions to the problem.

As noted earlier in this chapter, the Neighbourhood Justice Centre told the Commission it is piloting a digital case-management system. Using a real-time airport-style electronic display of listed matters, and alerts transmitted to parties' mobile phones, parties will be able to observe their place in the order of matters being heard on a given day. This will enable them to more effectively plan and structure their time in court (including leaving to return closer to their hearing time if they wish) and to make transport, work and child-care arrangements. Another aim is to help alleviate the distress and frustration caused by an indeterminate waiting period. Other courts should consider combining it with conventional list management processes.

Another possibility would be the provision of devices to court users that allow them to leave the court but remain nearby, so that they can be called to the court when required.

The Magistrates' Court and the Children's Court might also explore the use of 'benchmarks' for common court processes. Benchmarks might stipulate, for example, the maximum number of hours that parties to a listed first mention, direction hearing, or an ex parte interim hearing should have to wait in court before their matter is called, maximum periods between a first mention and a directions hearing, and so on. Effective use of benchmarks necessitates data-collection practices that allow courts to reliably measure performance. In addition, the use of benchmarks and caps carries certain risks: an unduly inflexible approach might see the exclusion of matters that require extra time, or warrant greater urgency. Any workable scheme must be subject to sensible discretion and continuous revision.

Legal and non-legal services that work within courts should be consulted in determining the readiness and appropriateness of particular venues for particular list management strategies.

## Recommendation 68

The Magistrates' Court of Victoria consider for each court [within 12 months]:

- ▷ capping lists of family violence matters at a level that allows magistrates sufficient time to hear each matter
- ▷ staggering family violence lists to provide greater guidance to parties as to when cases will be heard
- ▷ increasing the number of days dedicated to listing family violence matters
- ▷ introducing benchmarks for the maximum amount of time parties should wait for a listed family violence matter to be heard.

## Resourcing

Increased demand and inadequate resourcing leads to a deterioration in the comprehensiveness and quality of services court staff can provide. Most obviously, gaps in resourcing mean that the people who require services—security services, access to applicant or respondent workers, Court Networkers, or specialist family violence services—do not receive them at all or receive only limited services. Inadequate resourcing also leads to a workforce preoccupied with transactions and 'throughput' rather than with the safety and wellbeing of court users. The frustration some court users reported in connection with court-based services reflects this state of affairs.

Resourcing should not simply enable services to subsist in the face of growing demand, but should enable them to develop their expertise to contribute to the safety and wellbeing of court users, to find new ways to cooperate with other services, and to be part of the continuous improvement of the courts.

## Registrars

Registrars have an important role in supporting a therapeutic approach. For many court users, the first substantial encounter they have is with a registrar or registry staff. For private applicants, a registrar might be the first person they have spoken to about the violence they have experienced. Registry staff must be equipped to assist parties and identify any problems or discrepancies at an early stage, including supporting them in making correct and complete applications, assembling documents for the hearing and understanding the court's process. Ensuring lists are well managed and that magistrates are supported to consider applications efficiently and comprehensively, is also likely to alleviate some of the burden on courts.

The Commission proposes that registrars be supported to become highly skilled and proactive case managers for both court users and the judiciary, rather than having their time and efforts directed to 'throughput' operations. Registrars should devote significant time to answering inquiries related to case files, having ongoing contact with court users as required, and preparing risk assessments for the magistracy.

This will require a shift from the current transaction focus of the registry in some magistrates' courts, to a service focus, and should be supported by a workforce development strategy. The e-registry recommended above, that will allow courts to provide a number of registry services online, is a significant step towards equipping registrars to fulfil their role as case and list managers.

## Legal services

The Commission accepts the evidence we heard about the importance of adequate legal services for court users. Victoria Legal Aid and community legal centres must be resourced to provide adequate duty lawyer services in all magistrates' court venues.

In keeping with the views of the Australian Women Against Violence Alliance, the Commission considers that providing legal services in family violence matters requires a workforce that has the agility to respond to growing and changing patterns of demand; that is resourced to design, develop and evaluate new ways to work; can strengthen and maintain links with other (legal and non-legal) service providers; and can attract and develop staff over the long term. This in turn requires funding which is sustained, secure and sufficient.

The high cost of legal services, the limited availability of free or subsidised services, and the pressure on existing services, are perennial concerns. Limited services are particularly concerning in the context of family violence, when the parties may have unequal access to resources and legal processes can be used by the perpetrator to continue dominating the victim. Victims may also endure significant financial hardship to engage legal representation, including depleting their savings, incurring debt and selling or mortgaging property and assets. Yet these assets and resources may be a protective factor, and their depletion may inhibit a victim's autonomy and increase their vulnerability to further violence.

One of the more difficult responsibilities of Victoria Legal Aid and Victoria's various community legal service providers is prioritising their service provision to ensure as many people as possible, and those people in the greatest need, receive legal services. In circumstances where finite resources are applied to growing demand, such a balancing exercise is necessary and appropriate. However, the resourcing of legal services must be sufficient to ensure that those who clearly require duty lawyer services in FVIO proceedings—whether applicants or respondents—are able to access them.

Expanding access to specialist courts will entail adequate resourcing for the provision of legal services at these venues. This is so not just because there will ultimately be a greater number of matters heard at headquarter courts, but because legal service provision is often more intensive at specialist family violence courts, where a wider variety of matters are heard. This is noted in a May 2015 Victoria Legal Aid board paper assessing duty lawyer service demand, that notes that the specialist court model 'necessitates additional lawyer time with each respondent/applicant to appropriately tailor orders', because magistrates will wish to ensure that lawyers have 'screened for family law and criminal law issues and have provided referrals to criminal and family law legal services'.<sup>355</sup>

It must be emphasised that the availability of duty lawyer services is just one aspect of the role played by community legal centres and Victoria Legal Aid. They also provide services outside of court—notably, Victoria Legal Aid’s Legal Help service, in-person consultations, and community legal education services. These services (and perhaps community legal education in particular) are an invaluable aspect of ensuring that the community—and in particular, potentially vulnerable or isolated members of the community—are aware of their legal rights and how to exercise them. Educating and equipping people before they come to court lessens the burden on court staff and court-based services when people do attend court, and improves the ability of court users to initiate and participate in proceedings.

The Commission is aware that a review of access to justice in Victoria led by the Department of Justice and Regulation is currently under way, and will deliver its final report in August 2016. Its terms of reference include the availability and distribution of funding among legal service providers, the availability of pro bono legal services, and support for self-represented litigants. The cost of legal services will also be considered.<sup>356</sup> We anticipate that it will assist in addressing some of the resourcing concerns raised in submissions to this Commission.<sup>357</sup>

## Recommendation 69

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue the expansion of resourcing for legal services, including Victoria Legal Aid and community legal centres, to resolve current under-representation by and over-burdening of duty lawyer services in family violence matters [within 12 months].

## Making courts safer and more accessible

The Commission was told that many magistrates’ courts are unsafe and inaccessible for affected family members (and sometimes respondents). This was confirmed by the Commissioners’ observations at the courts we visited. The infrastructural deficits, including a lack of space, privacy and signage, across many magistrates’ court venues present serious obstacles for many court users.

As a community we should not tolerate situations where emotionally stressed and fearful victims, who are often accompanied by young children, have to spend lengthy periods in court waiting areas in the vicinity of perpetrators and, sometimes, perpetrators’ supporters. Nor should we tolerate situations in which people with disabilities or people who are from culturally and linguistically diverse backgrounds and others are forced to attend court premises that do not meet their needs or which make them feel unsafe. It is unacceptable that people are given legal advice under a tree or in their lawyer’s car because there is no space within the court.

In an attempt to identify problems in court facilities, the government has funded an audit of magistrates’ courts to identify potential improvements to infrastructure. This is a welcome development. However the audit does not address all matters relevant to safety and accessibility raised in the evidence heard by the Commission. The Commission makes a recommendation below about the infrastructure required at courts that hear applications for family violence intervention orders

We also recommend below that greater use should be made of remote witness facilities to enable witnesses to give evidence away from the court or from court-based interview rooms. To some extent this will reduce the need to make infrastructure changes at all magistrates’ courts.

Family violence-related demand is not evenly dispersed across the courts. There would be little use in retrofitting all courts to incorporate all of the features we consider necessary pending the move to headquarter courts. Nevertheless, we believe that the Victorian Government should consider the findings of the court infrastructure and safety audits and the recommendations in this report and complete necessary changes at courts with high volumes of family violence-related matters.

Prior to the move to headquarter courts, the Commission also recommends that the court give particular consideration to the viability of using pre-existing local facilities and structures, such as halls and offices, to supplement inadequate court premises (for example for the purpose of providing safe waiting areas). These structures may already have some of the characteristics listed in the recommendation below, or they may have greater potential to be 'repurposed' to incorporate them. The Commission recognises that this may be particularly important in rural and regional areas.

### **Accessibility for particular groups and communities**

Elsewhere in this report the Commission discusses the barriers confronting some people and communities—including people of culturally and linguistically diverse background, members of the lesbian, gay, bisexual, transgender and intersex communities, Aboriginal and Torres Strait Islander peoples and people with disabilities—in relation to gaining access to and obtaining the full benefit of the court system. Factors affecting these groups and communities are explored further in Chapters 26.

In the Commission's view, it is essential that the range of services made available at specific court venues reflects the needs of the local population, including those of particular groups and communities.

Concerns were raised about the availability and quality of interpreters. Obviously, any risk that an interpreter might (even through no fault of their own) present a barrier to the exercise of legal rights, rather than be a central element of access to justice for, for example, CALD women or AUSLAN users, must be minimised.<sup>358</sup> This is discussed in Chapter 28.

The Commission was advised that funding for the Koori Family Violence and Victims Support Program ceased on 30 June 2015. This disappointing development warrants reconsideration. If a magistrates' court venue is used by a substantial number of Aboriginal and Torres Strait Islander people, it is vital that culturally safe and appropriate services are offered at that venue. In Chapter 26 we make recommendations regarding this program.

The Commission welcomes the introduction of the Judicial College of Victoria resource to educate and guide judicial officers interacting with people with a disability which has been prepared for the Magistrates' Court by the JCV.

## Recommendation 70

The Victorian Government fund and complete works to ensure all Magistrates' Court of Victoria headquarter courts [within five years]:

- ▷ provide safe waiting areas and rooms for co-located service providers
- ▷ provide accessibility for people with disabilities
- ▷ provide proper security staffing and equipment
- ▷ provide separate entry and exit points for applicants and respondents
- ▷ provide private interview rooms available for use by registrars and service providers
- ▷ provide remote witness facilities, to allow witnesses to give evidence off site and from court-based interview rooms
- ▷ provide adequate facilities for children and ensure that courts are 'child-friendly'
- ▷ use multi-lingual and multi-format signage
- ▷ use pre-existing local facilities and structures to accommodate proceedings or associated aspects of court business—for example, for use as safe waiting areas.

Prior to all family violence matters being heard and determined in specialist family violence courts, the Victorian Government should fund and complete works to ensure that those magistrates' courts (and children's courts) that deal with a high volume of family violence-related matters have similar capacity.

### Better use of remote facilities

Victims' experiences of giving evidence in FVIO and other family violence-related proceedings can often be improved by allowing them to give evidence via a remote facility. For some time, this process has been available for vulnerable witnesses in some court proceedings.

At present section 69 of the Family Violence Protection Act allows evidence to be given outside the courtroom in FVIO proceedings, but the Commission understands that video link facilities are underutilised. This may be because the current technology for hearing witnesses through remote facilities requires improvement so that their use does not slow down hearings and make it more difficult to complete court lists.

The Commission acknowledges that section 69 of the Act be strengthened to establish a rebuttable presumption that evidence may be given outside the courtroom (using closed-circuit television or similar means) in FVIO proceedings unless the affected family members wishes to give evidence in court. Upgrading of technology should permit this to be done without excessive delays. Section 363 of the *Criminal Procedure Act 2009* (Vic) mandates the use of closed-circuit television for complainants in sexual offence cases. We recommend that this section be extended to criminal proceedings arising out of family violence.

Legislation allows pre-recording of the evidence of children and people with cognitive impairments for certain offences, and use of the pre-recording in court.<sup>359</sup> We suggest that the government investigate the possibility of prerecording the evidence of victims of family violence (or some categories of victims, for example victims with disabilities) for use in family violence-related criminal prosecutions.<sup>360</sup>

The Commission acknowledges the recent efforts of the Magistrates' Court and Women's Legal Service Victoria in establishing its video-conferencing pilot, which allows affected family members at high-risk to attend court and receive legal advice from a confidential remote location, avoiding potential contact with perpetrators and improving access to justice for women in regional and remote locations.<sup>361</sup>

The use of remote facilities (and associated technologies) for a wider range of purposes should also be explored. The Commission notes Women's Legal Service Victoria's LINK Outreach service, which uses Skype to enable rural women who are experiencing family violence to obtain legal advice. The Women, Lawyers, Workers Project, has also provided for women in rural and regional areas to receive legal advice via Skype. As Deakin University's *Landscapes of Violence* report notes, projects of this kind can:

... overcome significant social and geographic boundaries, in essence creating new, borderless, confidential and safe spaces where survivors can obtain assistance.<sup>362</sup>

Finally, a note of caution: in her evidence to the Commission, Ms Field, Specialist Family Violence Service Registrar at the Sunshine Magistrates' Court, drew attention to the fact that the remote witness facility at that court is physically isolated from the rest of the court and from court security, and as a result can be an unsafe place for applicants. Clearly, this is not acceptable and undermines the very function of such facilities. In expanding the availability and use of remote witness facilities, safety must be a priority.<sup>363</sup>

## Recommendation 71

The Victorian Government amend section 69 of the *Family Violence Protection Act 2008 (Vic)* and section 363 of the *Criminal Procedure Act 2009 (Vic)* [within three years] to provide that the court must permit a family violence victim to give evidence from a place other than the courtroom by means of remote technology that enables communication with the courtroom, unless the victim wishes to give evidence from the courtroom.

## Recommendation 72

The Victorian Government consider legislative amendments to permit the use of video- and audio-recorded evidence in family violence-related criminal proceedings involving either adults or children [within 12 months].

### **Making application forms simple and information accessible**

People who make a personal application for an FVIO must complete an information form. The form is long and detailed. Any effort to simplify it must take account of the need for courts to have a thorough understanding of the nature of the violence that is the subject of the proceedings. A lack of detail at the outset can lead to adjournments to seek further and better particulars or the imposition of inappropriate or incomplete orders that put the applicant at greater risk, impose unsuitable restrictions on the respondent or lead to applications to revoke or vary orders. The registrar (and others, such as Court Network staff) can assist in ensuring the applicant understands the form. Nonetheless, the information form and associated documentation should be expressed in plain, accessible language and be supplemented by explanations.

The Commission notes that in its response to Judge Gray's investigation into the death of Luke Batty, the Magistrates' Court committed to reviewing its 'Information for application for an intervention order' form to simplify it.<sup>364</sup> We welcome the review.

In view of the risks and trauma that might accompany visiting the court in person to complete an FVIO form, the Neighbourhood Justice Centre's efforts to provide an online alternative to a paper form are laudable, as is the Victorian Government's commitment to expanding use of the online form to high-volume magistrates' court venues. In the Commission's view, use of the online form should be an option for applicants statewide.<sup>365</sup>

The Commission acknowledges the Magistrates' Court of Victoria and Victoria Legal Aid's initiative in developing a new website to provide information to applicants and respondents about family violence and FVIO procedures.<sup>366</sup> Information of this kind, available in advance of the application and/or hearing process, will increase the confidence and wellbeing of victims and, potentially, improve the quality of individually initiated applications and evidence. The Commission recommends that the Magistrates' Court and Victoria Legal Aid seek to make the information on this website (including the instructional videos) available to as many litigants and in as many formats, as possible. In particular, it suggests that applicants and respondents who arrive at court should be offered the opportunity to view instructional materials in an audiovisual format. It further recommends that the information be made available in easy English and multiple languages, including AUSLAN, according to the needs of the local population. The Commission also encourages the court to ensure that legal and other service providers are aware of the website's existence and can refer people to it. We also suggest that multimedia information be made available in court waiting areas.

In our view, the expansion of access to specialist family violence registrars will provide crucial assistance to applicants in the initial application process. That said, it is important that, where possible, applicants also be referred to legal services that may be able to provide more specific assistance to them in completing the FVIO1 form.

A specific suggestion regarding the form, raised in the submission of the Commission for Children and Young People, is that it be revised to include a mandatory section explaining the family violence that any children have witnessed and the impact on them (at present it has a 'tick box' to confirm whether a child has been exposed to violence). In Chapter 10, we recommend a rebuttable presumption that children be added to FVIOs. Allowing the applicant to describe the extent of a child's exposure to violence on the form in greater detail may help to focus the court and the applicant on the involvement of the child.<sup>367</sup>

### Recommendation 73

The Magistrates' Court of Victoria (and the Children's Court of Victoria) produce multimedia information about the family violence intervention order process that can not only be viewed online but can also be shown in court waiting areas to complement the development of 'plain language' family violence intervention order forms and simplified order conditions [within 12 months].

### Recommendation 74

The Magistrates' Court of Victoria roll out an online application form (based on the Neighbourhood Justice Centre's online application form) for all applicants for a family violence intervention order across Victoria [within two years].

## Engaging with perpetrators

The Commission heard that respondents often fail to attend FVIO proceedings. Where the court accepts that violence has occurred, this deprives the court of the opportunity to use its authority to impress on the respondent that what he has done is unacceptable and may have serious legal consequences. Respondents are also more likely to abide by orders if they have the order explained to them and understand what it prevents them from doing. If they do not attend court they may not appreciate that a breach is a criminal offence. Respondent workers can encourage perpetrators to participate in a behaviour change or other programs or to seek help for other problems that may have contributed to their use of violence.

Encouraging perpetrators to attend court is difficult. There are means by which courts can compel the attendance of perpetrators. Section 50 of the Family Violence Protection Act permits magistrates and registrars to issue warrants for a respondent's arrest on various grounds, including to ensure that the respondent attends court in relation to FVIOs.<sup>368</sup> In final hearings, a subpoena to attend court to give evidence can be issued to the respondent.<sup>369</sup> It goes without saying that the courts should use these provisions where appropriate. The current situation, whereby the respondent's absence is commonplace, should be viewed by police and courts alike as undesirable.

In some circumstances respondents might appear remotely. Any deployment of remote facilities for respondents must seek to preserve the 'encounter' between the court and the respondent. This could be achieved, for example, by ensuring that the respondent can see and speak to the magistrate directly from the remote location.

## Preventing abuse of proceedings

### Cross applications

Delays caused by respondents, including delays that arise from abuse of process, are a serious concern. Baseless cross-applications are a prominent example of such abuses. Some submissions recommended that leave should be required to file a cross application.<sup>370</sup>

A legislative or regulatory response to abuse of proceedings could, however, have unintended consequences. There might be cases in which cross-applications are appropriate. In some cases the primary aggressor—perhaps for tactical reasons, to discourage the victim or to exculpate himself—will apply for an FVIO before the victim, which means the victim's application will be treated as a cross-application. Further, requiring leave to cross-apply could increase delays, unjustly penalise the victim and place them at heightened risk.

Reliance on discretion is preferable. Judicial registrars and magistrates (when adequately trained in the nature and dynamics of family violence) are aware of the potential for abuses of process and are generally skilled at detecting such abuses. The existing scheme provides for them, and practitioners representing applicants and respondents, to limit such abuses.<sup>371</sup> For example, although the court may grant an order by consent without satisfying itself that violence has occurred or is likely to continue, it may refuse to grant such an order if it considers the order is likely to pose a risk to a party or child of an affected family member or respondent, and it may conduct a hearing into the particulars of an application. These discretionary powers can, and should, be used to detect abuses of process.

Further, making false or misleading statements in court or by affidavit can constitute perjury, contempt of court or a related offence, or may result in a person being deemed a vexatious litigant.<sup>372</sup>

For their part, legal practitioners should also be capable of properly discerning whether a proceeding or application in connection with which they are providing advice or advocacy is improperly based. They are officers of the court, and required both by procedural<sup>373</sup> and professional conduct rules to act accordingly.<sup>374</sup>

If vexatious proceedings or applications are not being detected, this could mean that the judiciary, court staff and legal practitioners are not sufficiently resourced to detect them. The Commission's expectation is that the recommendations it makes in relation to managing demand will augment the capacity of the judiciary, court staff and legal practitioners to detect vexatious proceedings and that these measures will be more effective than incorporating a further layer of procedure.

In addition, court staff have a role to play in shielding applicants from delays or vexatious proceedings initiated by respondents. For example, if police have not been able to serve a respondent or if for other reasons relating to the respondent a scheduled mention will need to be adjourned, registry staff should seek to contact the applicant in advance of the mention and tell them they do not need to attend court. If staff are not taking these and similar measures in all cases, this could reflect the fact that they are over-burdened or under-resourced.

### Appeals without merit

The Commission notes the County Court of Victoria's recommendation that the County Court be empowered to strike out an FVIO appeal at the pre-appeal mention if the appellant fails to appear on more than one occasion without reason.<sup>375</sup> Subject to the relevant procedural safeguards, it is appropriate that an appellant's repeated failure to appear should enliven a discretion to strike out the proceeding. There could, of course, be circumstances in which the appellant's absence is explicable, but there will be others in which the respondent has lodged an appeal merely to protract the proceedings, without having a real prospect of success.

The Commission notes that the County Court has case-management powers under its own rules which may already enable it to dispose of an improperly brought appeal before the appeal hearing. In any event, the Commission's concern is that these powers are fully and properly understood and used. To the extent that devising clearer legislative provisions will promote certainty and confidence that County Court judges can strike out an appeal at the pre-appeal mention where the appellant is not present, we support this course, and make recommendations accordingly.

## Recommendation 75

The Victorian Government legislate to permit the County Court of Victoria to strike out an appeal in circumstances where the appellant does not appear at a pre-appeal mention, is served with notice that the appeal will be struck out if the appellant does not attend the next mention date, and the appellant does not attend the next mention date [within 12 months].

## Family violence safety notices

There is a growing body of research that supports the view that the likelihood of altering a perpetrator's behaviour increases when the response to perpetration is prompt.<sup>376</sup> The increased efficiency with which police and courts now respond to family violence is hard-won progress. Many submissions and witnesses praised the improvements in efficiency in recent years and decades in the legal response to family violence.<sup>377</sup>

The Commission notes, however, that police-initiated FVIO applications that are brought to court very quickly can have a detrimental effect on both the capacity of victims to decide what they want to do and the accountability of perpetrators. The speed at which matters unfold can mean that someone is compelled within hours to begin to contemplate their future and their legal options and within only days, give evidence in a public courtroom, be asked deeply personal questions, and make decisions that will affect their life and their family's life potentially significantly and permanently. Equally, the benefits of a prompt response can be diminished if a perpetrator's first appearance in court is insubstantial, because, for example, there has not been adequate time to prepare a matter.

In practical terms, if a victim does not consent to a police-initiated FVIO application, police will only be able to apply for a limited FVIO—that is, one in which the FVIO conditions might not include more than prohibiting the perpetrator from committing family violence or causing another person to engage in family violence and, where applicable, revoking, suspending or cancelling the perpetrator's weapons approval or exemption or firearms authority.<sup>378</sup> Conditions barring the perpetrator from visiting specific places (including the applicant's residence), approaching or contacting affected family members, or using or removing property cannot be made without the victim's consent. As a result, if police are not able to involve the victim in the application process or persuade them of its necessity, a suitable comprehensive order might not be possible and the victim might be placed at further risk.

It follows that ongoing improvements in efficiency must be balanced by providing commensurate supports to family violence victims, to ensure that they are informed participants in the legal process and that they understand the consequences of decisions they are asked to make. Some of these matters are discussed in Chapter 14 but, to the extent that they apply to police-initiated applications, the Commission's recommendations are aimed at ensuring that police applications are fully investigated and the parties properly informed before the application is considered, so that the first encounter with the court is as meaningful and productive as possible.

In part because of the issues relating to preparation and excessive speed, and the increased duties that we seek to impose on police (see below) to improve the quality of their applications, we are recommending an increase in the period during which family violence safety notices may operate prior to the first mention in the Magistrates' Court. At present, the first mention in relation to an application made by family violence safety notice must be within five working days of the notice being served. We recommend an increase to 14 days (including non-working days).

The Commission envisages that this extra time will be effectively used by police to ensure that the circumstances of the parties, and the status of parallel proceedings, are fully understood; and that, for their part, victims understand the nature of the process in which police are asking them to engage. This should mean that there are fewer adjournments due to relevant matters not being known, fewer requests for 'further and better particulars'; and that the initial mention in court is substantial, purposeful and effective. It should maximise the opportunity for the court to engage with the perpetrator and reduce the number of occasions that the victim will need to return to court to tell her story. We also envisage that the enhanced intake model recommended in Chapter 13 will ensure that both applicants and respondents have the opportunity to consult with specialist service providers, and have any immediate needs assessed, and if possible addressed, prior to the first hearing.

The Commission appreciates that, in certain circumstances, the period prior to the first mention has in the past been a period of risk to the victim, because the perpetrator may have had restrictions placed on his freedom of movement or association, and may not be prepared to comply with those restrictions. In our view, the need to ensure the safety of victims at high risk of harm must be carefully balanced against the risk of harm to the victim that protracted or poorly prepared FVIO proceedings currently entail.

The Commission anticipates that police will exercise judgment in discerning those matters which, the 14-day maximum period notwithstanding, should be brought to court very quickly, because of complexities or acute risks. In particular, we note section 31(3)(a) of the Family Violence Protection Act requires notices including an exclusion condition to be brought to a mention as soon as practicable. We further anticipate that, during the term of the safety notice, police will remain in contact with the victim and perpetrator and ensure that the terms of the notice are not contravened. In ordinary circumstances, it should not be acceptable for a police application to proceed to court without having properly consulted with the victim. Indeed, police should ensure that victims and perpetrators are aware of their rights and responsibilities, and given appropriate referrals to specialist family violence services and legal services, at the earliest possible opportunity. In particular, we note the availability of VLA's Legal Help service. Victims and perpetrators should be referred to this service when a notice or application is issued. We also anticipate that the improved intake process for referrals from police to specialist services, outlined in Chapter 13, will mean that services who receive referrals from Victoria Police are able to make contact with parties more efficiently and reliably.

Finally, we recommend that the increase from five to 14 days be subject to evaluation after a period of two years, with an emphasis on evaluating any unintended or adverse consequences including increased risk.<sup>379</sup> This evaluation could be done by the independent Family Violence Agency, which the Commission has recommended be established.

## Recommendation 76

The Victorian Government amend section 31 of the *Family Violence Protection Act 2008 (Vic)* to stipulate that the first mention date for a family violence safety notice must be no later than 14 days after the notice, or form of notice, is served [within 12 months].

## Orders

### Consent orders

A great many FVIOs are made by consent, a process by which the parties agree on orders that are then formalised by a magistrate. Agreeing on consent orders, including through facilitated dispute-resolution processes like mediation, may be a difficult process for victims of family violence.<sup>380</sup> If the victim is not legally represented, the negotiation process can provide an opportunity for a violent partner to continue to frighten and dominate the victim.<sup>381</sup> On the other hand, a structured and transparent process for agreeing to consent orders could offer some women the chance of obtaining orders quickly and moving on with their lives.<sup>382</sup>

Consent orders can also have implications for the accountability of perpetrators and the safety of victims. When an order is made by consent without admissions the court may express no view about the respondent's conduct or culpability, and the respondent will not be compelled to admit any wrongdoing. This may mean that victims do not feel that justice has been done or that the harm they have experienced has been acknowledged.

The Commission notes that the negotiation process involved in arriving at an order by consent may be opaque and variable depending on the situation, the parties and the presence of legal representatives. If there is a history of family violence between the parties, with everything that can entail—including an imbalance of power, fear, vulnerability, and the possibility of manipulation and coercion—it is extremely important that the negotiation process is properly managed. If the parties are not (or not adequately) legally represented, there is no guarantee that this will occur, and the result can be incomplete or inappropriate orders, whether on a primary application, a variation, extension or withdrawal, or a cross-application.

There is however little doubt, particularly in courts with exceptionally long lists, that a busy magistrate may intervene sparingly, and rely on legal practitioners having responsibly canvassed the issues and arrived at a suitable and fair arrangement. If legal services are equally strained this assumption is not safe. If a magistrate displays reluctance to delve into something, the parties might be discouraged from bringing persisting queries or concerns to the magistrate's attention.

In view of the prevalence of consent orders, and their lack of transparency, the possibility of introducing a more structured and legally supported approach to negotiating consent orders should be explored. The Commission recommends below that the Department of Justice and Regulation investigate how to improve the negotiation process associated with consent orders.

## Appropriate orders

The Commission emphasises the importance of a consistent level of understanding (of the legislative scheme, and of family violence) in making orders. We make recommendations relating to judicial education in Chapter 40. The Judicial College of Victoria should play a central role in this process. It should be noted that aside from developing the family violence bench book, the JCV has published a series of ‘checklists’ for judicial officers on FVIOs—in particular, on *ex parte* interim hearings, mention dates, final hearings, mandatory considerations and variations, revocations and extensions.<sup>383</sup> We support this work, recommend the material to magistrates and the wider Victorian judiciary, and encourage the JCV to continue to update and add to these resources.

The Commission also accepts that there may be a tendency to view the list of FVIO conditions provided in the Family Violence Protection Act as exhaustive, and to issue orders for a standard period (usually 12 months). We note that in Dr Gelb’s report to the Commission, she records that ‘[w]hile occasionally [non-standard] conditions were attached to address specific circumstances of a family, these were uncommon’.<sup>384</sup> In its 2015 report on sentencing for contravention of family violence intervention orders and safety notices, the Sentencing Advisory Council reports that almost four in five final orders made in the Magistrates’ Court from 2009–10 to 2014–15 were issued for between 12 and 24 months, and the median duration was 12 months. The Sentencing Advisory Council refers to the suggestion in its 2009 report that ‘the court may need to impose FVIOs with durations of more than 12 months in the first instance, given that the risk of further violence may not always abate over the first year’.<sup>385</sup>

Here as in other areas, the Commission’s view is that improved training coupled with demand management will give judicial decision-makers, and the legal and court professionals assisting them, the opportunity and confidence to more frequently devise orders which properly respond to the circumstances of a particular matter.

In addition, judicial officers need to have confidence in the organisations and institutions responsible for monitoring and administering orders—in particular, Corrections Victoria, the organisations delivering men’s behaviour change programs, and Victoria Police. It is possible that in some cases, judges are not making orders of certain kinds, or lawyers are not proposing them on their clients’ behalf, because they lack that confidence—because they know that certain kinds of orders, for instance due to demand or resourcing constraints that apply either across Victoria or in particular areas, are unlikely to be enforceable. As noted elsewhere in this report, the system’s parts are, in this sense, interdependent: best practice is most likely to occur when an institution, organisation or professional has confidence that the other parts of the system will also operate effectively.

## Recommendation 77

The Department of Justice and Regulation convene a committee, including representatives of the Magistrates’ Court, Victoria Legal Aid and Women’s Legal Service Victoria, to investigate how family violence intervention orders by consent are currently negotiated and develop a safe, supported negotiation process for victims [within three years].

## Permanent orders

As noted, some support was expressed for the introduction of permanent FVIOs. In the Commission’s view, however, the indefinite imposition of orders would be excessive in some circumstances, and it should not be incumbent on the respondent to demonstrate in such cases that this is so. The duration of an FVIO, as with its conditions, should reflect the needs and concerns that arise from particular cases and in particular the safety of the person protected by the order. The Commission does not recommend a move to permanent orders.

## Self-executing orders

An amendment to the Family Violence Protection Act providing for self-executing FVIOs is due to come into force on 1 July 2016. It will enable a finalisation condition to be attached to interim orders (which are often made without the respondent present) in a range of cases, so that no subsequent hearings need occur.<sup>386</sup>

The Commission considers that the accountability and compliance of the perpetrator and the safety of the victim are best assured if the parties have been adequately assisted by legal and other services at the court, have had the opportunity to express their viewpoint, and have had the terms and implications of the order fully explained to them by the magistrate and their legal representatives. Without this, there might be increased breaches or contests that offset the gains in efficiency the amendment seeks to achieve.

The amendment makes the person subject to the order responsible for independently challenging the order, rather than the justice system being responsible for ensuring that the person has afforded, understands and has the capacity to exercise that right. Although a respondent has the opportunity to challenge an interim order before it is finalised, there is a concerning possibility that some respondents, perhaps a substantial number of them, will not understand that opportunity, how to exercise it or the consequences of failing to do so. Apart from being unfamiliar with the law and legal processes, some respondents might, for instance, not be fully literate (at all or in English) or might suffer from cognitive impairment or other disability.

The Commission accepts that the court must be satisfied that the respondent is likely to understand the written explanation of the interim order if a finalisation condition is to be included, but this is often a difficult judgment for a magistrate to make, particularly on the basis of limited information.

A self-executing order is not consistent with the objective of 'keeping the perpetrator in view', and maximising the role of the justice system as an agent of intervention and accountability. Just as it deprives some perpetrators of the opportunity to exercise their rights, a self-executing order also allows perpetrators of family violence to remain hidden from view—to be the passive and distant recipient of an order rather than being a focus of the corrective force and authority of the justice system.

For these reasons, the Commission's view is that self-executing orders should not come into effect in Victoria.

If the Victorian Government is not minded to accept this recommendation, we urge an extension of the period before which the amendments come into effect, to allow courts and service providers to prepare their staff for the procedural changes.

## Recommendation 78

The Victorian Government repeal the unproclaimed provisions of the *Family Violence Protection Amendment Act 2014* (Vic) providing for interim family violence intervention orders with an automatic finalisation condition (self-executing orders) [within 12 months].

## Linking the Magistrates' Court with other services

In seeking to improve its response to family violence, the Magistrates' Court of Victoria and the higher courts should seek opportunities to work with the broader family violence system. A 'siloed' response is a risk for all organisations and institutions in responding to family violence. The fundamental independence of courts exacerbates that risk. Courts must be independent, but they need not be isolated, and should seek to take advantage—and find ways for court users to take advantage—of the practices, programs and expertise in the specialist family violence system.

In Chapter 13, we make recommendations to develop Support and Safety Hubs for the intake and referral of victims and perpetrators of family violence. We also make recommendations for improved governance, information sharing and a collective and coordinated response to risk assessment and management (see Chapters 6, 7 and 38). Courts can, and in our view should, make an important contribution to those developments.

Courts, like other service providers, should also ensure that they make the best use of the hubs. Applicant and respondent support workers and other court-based service providers should be made aware of the hubs and encouraged to make referrals to them where appropriate.

Magistrates' courts already participate in numerous ongoing groups and committees: we note for example the participation of the Magistrates' Court in Court User Group meetings, as well as the Violence Against Women and Children Forum, the Department of Justice Family Violence Steering Committee, the Family Violence Stakeholders Reference Group, the Family Violence Statewide Advisory Committee, the Indigenous Family Violence Regional Action Groups and the Systemic Review of Family Violence Deaths reference group.<sup>387</sup> In its submission to us, the Magistrates' Court of Victoria drew attention to the Walk In Her Shoes tours at Melbourne, Ballarat, Frankston and Sunshine Courts, which provide government and non-government agencies and final-year tertiary students with an introduction to the process of applying for an intervention order.<sup>388</sup> The court was also involved in the Family Violence Integration Project, a partnership involving a range of services and institutions, including Victoria Legal Aid, Victoria Police, Ringwood Magistrates' Court, Eastern Domestic Violence Service and Court Network.

As Leading Senior Constable Fiona Calkin, the Family Violence Court Liaison Officer of Victoria Police explained in her statement, the project had quarterly meetings to discuss processes in relation to intervention order applications, safety and referral pathways and safety issues at Magistrates' Courts.<sup>389</sup> Through the project, pre-court meetings were held on family violence sitting days involving court, police and specialist family violence services staff. Part of the project's work was the development of an intervention order referral guide for use by people who come into contact with affected family members and respondents, such as police to refer them to appropriate services.

These initiatives provide a setting for consultation, learning and feedback, and the development of shared practices, systems and goals.

We further note the recent establishment of Court Services Victoria,<sup>390</sup> which could provide a framework for developing, implementing and reviewing standards and practices relating to family violence.

In short, we hope, and are confident, that the courts will continue to be invaluable participants in the integrated response to family violence.

## Endnotes

- 1 See also Chapter 5, which provides a more comprehensive account of systems, including the justice system, which interact with family violence.
- 2 *Family Violence Protection Act 2008* (Vic) s 42.
- 3 This is the number of courts at date of writing and according to the submission of the Magistrates' Court of Victoria and Children's Court of Victoria: Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 1. Note that we use the term 'venue' to refer to particular Magistrates' Court locations (eg Melbourne, Ballarat).
- 4 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12.
- 5 *Family Violence Protection Act 2008* (Vic) ss 42, 146. See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 3.
- 6 *Family Violence Protection Act 2008* (Vic) s 123; *Sentencing Act 1991* (Vic) s 112.
- 7 *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic); *Family Violence Protection Act 2008* (Vic) ss 37A, 123A, 125A.
- 8 *Family Violence Protection Act 2008* (Vic), ss 37A, 123A, 125A.
- 9 *Magistrates' Court Act 1989* (Vic) s 25; *County Court Act 1958* (Vic) s 36A; *Children, Youth and Families Act 2005* (Vic) s 516; *Criminal Procedure Act 2010* (Vic) ss 28–9, sch 2; *Supreme Court Act 1986* (Vic) s 17. See also Court Services Victoria, Submission 646, 4.
- 10 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 3.
- 11 *Victims of Crime Assistance Act 1996* (Vic) s 19.
- 12 *Ibid* s 25.
- 13 VCAT has no inherent jurisdiction; jurisdiction is conferred on it by enabling enactments: *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 3, 40–4. See generally Victorian Civil and Administrative Tribunal, Submission 164.
- 14 Victorian Civil and Administrative Tribunal, Submission 164, 5.
- 15 It may hear monetary claims for up to \$100,000: *Magistrates' Court Act 1989* (Vic) ss 3, 100. Claims for less than \$10,000 are, subject to some exceptions, referred to arbitration unless the Court decides otherwise. That decision will depend on factors such as the complexity and subject of the dispute and the parties' circumstances. Potentially, a history of family violence could be a relevant consideration. See *Magistrates' Court Act 1989* (Vic) s 102.
- 16 *Magistrates' Court Act 1989* (Vic) ss 4M–4O. See also Statement of Walker, 3 August 2015, 2–3.
- 17 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 2.
- 18 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) 41, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 19 *Family Violence Protection Act 2008* (Vic) ss 74, 80–3.
- 20 *Ibid* s 81.
- 21 *Ibid* s 123.
- 22 *Ibid* s 45.
- 23 Crime Statistics Agency, above n 18, 43.
- 24 *Family Violence Protection Act 2008* (Vic) s 75.
- 25 *Ibid* s 53.
- 26 *Ibid* s 54.
- 27 *Ibid* s 60.
- 28 *Ibid* ss 61, 74.
- 29 *Ibid* s 74(1).
- 30 *Ibid* ss 74(2), 74(3), 78.
- 31 *Ibid* s 97.
- 32 *Ibid* s 99(b).
- 33 *Ibid* s 108.
- 34 *Ibid* s 24.
- 35 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 10.
- 36 *Ibid* 11.
- 37 *Ibid* 10–11.
- 38 *Magistrates' Court Act 1989* (Vic) s 4H; *Family Violence Protection Act 2008* (Vic) Part 5. See also *ibid* 11.
- 39 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 10.
- 40 Magistrates' Court of Victoria, *Heidelberg Magistrates' Court* (17 July 2015) <<https://www.magistratescourt.vic.gov.au/court/heidelberg-magistrates-court>>.
- 41 *Family Violence Protection Act 2008* (Vic) s 126(b); State of Victoria, *Victorian Government Gazette*, No G41, 10 October 2013, 2511.
- 42 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 11.
- 43 *Ibid* 47.
- 44 State of Victoria, Submission 717, 37.
- 45 Letter from Peter Lauritsen, Chief Magistrate of the Magistrates' Court Victoria to Judge Hinchey, Victorian State Coroner, 22 December 2015 <<http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/response+--+inquest+into+the+death+of+luke+geoffrey+batty>>.
- 46 Court Network, Submission 927, 7–8. The stated number of courts serviced by Court Network is correct as at the date of this submission.
- 47 CISP is offered at Latrobe Valley, Sunshine and Melbourne Magistrates' Courts, and CREDIT Bail at Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Moorabbin and Ringwood Magistrates' Courts. See Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 13–14.
- 48 See, eg, Berry Street, Submission 834, 66; InTouch Multicultural Centre Against Family Violence, Submission 612, 23–4.
- 49 *Family Violence Protection Act 2008* (Vic) ss 146(1), (2).
- 50 *Ibid* s 42; *Magistrates' Court Act 1989* (Vic) ss 3, 4H, 4I.
- 51 *Family Violence Protection Act 2008* (Vic) s 42; *Magistrates' Court Act 1989* (Vic) s 3. See also Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (December 2006) 252–4, [8.4]–[8.13].
- 52 *Family Violence Protection Act 2008* (Vic) ss 114–15.
- 53 *Ibid* s 45.
- 54 'Form FVIO1'. See Magistrates' Court of Victoria, *Application for a Family Violence Intervention Order FVIO1* (2 August 2012) <<https://www.magistratescourt.vic.gov.au/forms/application-family-violence-intervention-order-fvio1>>.
- 55 Statement of 'Smith', 4 August 2015, 2 [13]–3 [21]. Community consultation, Werribee 1, 11 May 2015; Hume Riverina Community Legal Service, Submission 650, 4.
- 56 Mallee Family Violence Executive, Submission 617, 2.
- 57 Statement of Heenan, 3 August 2015, 8 [35].
- 58 *Ibid*.
- 59 Federation of Community Legal Centres, Submission 958, 34.

60 Law Institute of Victoria, Submission 832, 12–13.

61 Special Minister of State, Gavin Jennings, 'Better Protection for Family Violence Victims in our Courts' (Media Release, 2 December 2015) <<http://www.premier.vic.gov.au/better-protection-for-family-violence-victims-in-our-courts/>>.

62 Statement of Walker, 3 August 2015, 7–8 [26]–[29].

63 Magistrates' Court of Victoria, *Family Violence* (2016) <<https://familyviolence.courts.vic.gov.au>>.

64 *Family Violence Protection Act 2008* (Vic) ss 53–4.

65 Eastern Domestic Violence Service Inc, Submission 619, 19–20. Family Law Section—Law Council of Australia, Submission 863, 2.

66 Family Law Section—Law Council of Australia, Submission 863, 2.

67 See, eg, WAYSS Limited, Submission 542, 34; Eastern Domestic Violence Service Inc, Submission 619, 19–20.

68 Family Law Section—Law Council of Australia, Submission 863, 3.

69 Community consultation, Geelong 1, 28 April 2015.

70 Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1-3 (Edition 2)' (April 2012) 28, 68.

71 Family Law Section—Law Council of Australia, Submission 863, 3.

72 *Ibid.*

73 Eastern Domestic Violence Service Inc, Submission 619, 20.

74 *Family Violence Protection Act 2008* (Vic) ss 59, 61.

75 Magistrates' Court of Victoria, above n 63.

76 *Family Violence Protection Act 2008* (Vic) ss 48–50, 54, 57. The registrar or magistrate can also issue a warrant for the respondent's arrest if they believe the applicant's safety or property is at risk, or a child is at risk, or the respondent does not attend court at the mention date.

77 Victoria Police, Submission 923, 24; Transcript of Rudd, 4 August 2015, 1813 [10]–1814 [17]; Darebin Community Legal Centre, Submission 931, 10.

78 See, eg, Darebin Community Legal Centre, Submission 931, 10.

79 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015) 4, 108. The Commission notes recent IT improvements under way in relation to service: Magistrates' Court of Victoria, 'Family Violence Response: 2014' (1 January 2014), 6, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

80 *Family Violence Protection Act 2008* (Vic) s 78. See also Victoria Legal Aid, Submission 919, 59.

81 Statement of Cooney, 30 July 2015, 14–15 [72]–[76].

82 *Ibid* 14 [72].

83 *Ibid* 15 [75].

84 Family Law Section—Law Council of Australia, Submission 863, 3.

85 Magistrates' Court of Victoria, 'Resource and Costing Model: Final Report' (2014), 79, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

86 *Ibid.*

87 Magistrates' Court of Victoria, 'Magistrates' Court of Victoria Family Violence Operating Procedures' (1 August 2014), 98, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

88 *Ibid* 49.

89 Court Network, Submission 927, 20.

90 Broadmeadows Community Legal Service, Submission 791, 2–5; Footscray Community Legal Centre, Submission 472, 9; Community West-Brimbank Melton Community Legal Centre, Submission 387, 5.

91 See, eg, Peninsula Community Legal Centre, Submission 447, 12; Community West-Brimbank Melton Community Legal Centre, Submission 387, 5; Broadmeadows Community Legal Service, Submission 791, 2–5; Central Highlands Community Legal Centre Inc, Submission 463, 5; Footscray Community Legal Centre, Submission 472, 5; Gippsland Community Legal Service, Submission 443, 10; Inner Melbourne Community Legal, Submission 506, 20; Confidential, Submission 468, 1; Community consultation, Geelong 2, 28 April 2015.

92 Jane Wangmann, "She Said..." "He Said...": Cross Applications in NSW Apprehended Domestic Violence Order Proceedings' (PhD Thesis, University of Sydney, 2009). See also 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; Professor Belinda Fehlberg—Melbourne Law School, Submission 921, 167; Statement of Douglas, 20 July 2015, 3 [18].

93 Community consultation, Melbourne, 21 May 2015.

94 Women's Legal Service Victoria—01, Submission 940, 47–8; see also Anonymous, Submission 414, 9–10.

95 Transcript of Broughton, 6 August 2015, 2172 [28]–2173 [6].

96 Women's Legal Service Victoria—01, Submission 940, 47–8.

97 *Ibid* 11, 48; Broadmeadows Community Legal Service, Submission 791, 10.

98 Footscray Community Legal Centre, Submission 472, 8–9.

99 Law Institute of Victoria, Submission 832, 12–13.

100 County Court of Victoria, Submission 835, 1–2.

101 *Ibid* 7.

102 Transcript of Toohey, 4 August 2015, 1865 [20]–[24]. See also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 14–15.

103 Karen Gelb, 'Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria' (Karen Gelb Consulting, November 2015) 65.

104 *Ibid* vii.

105 Transcript of Toohey, 4 August 2015, 1864 [30]–1867 [5].

106 Civil liability must be established on the balance of probabilities, and criminal guilt beyond reasonable doubt.

107 For instance, if there are inconsistencies between her evidence at trial and in the FVIO proceedings.

108 Statement of Rudd, 27 July 2015, 8 [44].

109 *Criminal Procedure Act 2009* (Vic) s 7.

110 Transcript of Broughton, 5 August 2015, 1946 [2]. Deputy Chief Magistrate Broughton's evidence concerned summary offences and indictable offences triable summarily.

111 To define the issues in contention, and allow the accused, and the court, to consider the prosecution case. See *Criminal Procedure Act 2009* (Vic) s 96.

112 Coroners Court of Victoria, above n 79, 31 [166].

113 *Residential Tenancies Act 1997* (Vic) s 233A; see also Victorian Civil and Administrative Tribunal, Submission 164, 1–3.

114 *Victims of Crime Assistance Act 1996* (Vic) s 41; see also Springvale Monash Legal Service, Submission 807, 3.

115 See Victoria Legal Aid, Submission 919, 20.

116 See, eg, Anonymous, Submission 739, 2; Anonymous, Submission 782, 4; Mental Health Legal Centre Inc; Inside Access; Centre for Innovative Justice, Submission 648, 19; Sustainability Australia, Submission 845, 7–8; Darebin Community Legal Centre, Submission 931, 1; Family Law Section—Law Council of Australia, Submission 863, 3.

- 117 See Magistrates' Court of Victoria, 'Fast Tracking of the Hearing and Determination of Criminal Offences Arising out of Family Violence Incidents', (Practice Direction No 10 of 2014, 25 November 2014); Magistrates' Court of Victoria, 'Expansion of the Fast Tracking Listing Process to the Court at Broadmeadows and Shepparton' (Practice Direction 8 of 2015, 31 July 2015); Magistrates' Court of Victoria, 'Expansion of the Fast Tracking Listing Process to the Court at Ballarat and Ringwood' (Practice Direction No 8 of 2015, 18 September 2015). See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 15.
- 118 Magistrates' Court of Victoria, Fast Tracking of the Hearing and Determination of Criminal Offences Arising out of Family Violence Incidents, above n 117.
- 119 Coroners Court of Victoria, above n 79, 102–3; Peninsula Community Legal Centre, Submission 447, 21.
- 120 See, eg, Community consultation, Melbourne, 6 May 2015; Peninsula Community Legal Centre, Submission 447, 22; Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 9.
- 121 Magistrates' Court of Victoria, above n 87, 49.
- 122 Crime Statistics Agency, above n 18, 43.
- 123 Transcript of Goodmark, 6 August 2015, 2057 [5]–2058 [26].
- 124 Ibid 2060 [4]–[7]. See also, 2059 [11]–2060 [4].
- 125 Women's Legal Service Victoria—01, Submission 940, 33.
- 126 Gelb, above n 103, 62.
- 127 Ibid 65.
- 128 Statement of Walker, 31 July 2015, 10 [49] (citations omitted).
- 129 See, eg, Footscray Community Legal Centre, Submission 472, 7–8.
- 130 Victoria Legal Aid, Submission 919, 12–13. See also Statement of Smith, 4 August 2015, 3 [17]–[21].
- 131 Carolyn Neilson and Bonnie Renou, 'Will Somebody Listen to Me? Insight, Actions and Hope for Women Experiencing Family Violence in Regional Victoria: Summary Report' (Loddon Campaspe Community Legal Centre, April 2015).
- 132 Ibid 17.
- 133 Department of Justice, 'Information and Support Needs of Victims and Witnesses in the Magistrates' Court of Victoria' (2013) 12; see also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 29.
- 134 Statement of Heenan, 3 August 2015, 7–8 [32], [34].
- 135 Court Network, Submission 927, 14–15. Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.
- 136 Federation of Community Legal Centres, Submission 958, 27.
- 137 Court Network, Submission 927, 14–15; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.
- 138 Transcript of Casey, 4 August 2015, 1761 [30]–1762 [7].
- 139 See, eg, Community consultation, Geelong 1, 28 April 2015 and Community consultation, Bendigo 2, 5 May 2015.
- 140 See also, Victorian Law Reform Commission, above n 51, 220.
- 141 See also *ibid* 222.
- 142 See also *ibid* 220.
- 143 Court Services Victoria, Submission 646, 10; Court Network, Submission 927, 14–15.
- 144 Statement of Heenan, 3 August 2015, 7 [32]; Court Services Victoria, Submission 646, 10; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, xiii, 49.
- 145 Court Network, Submission 927, 15.
- 146 Federation of Community Legal Centres, Submission 958, 27.
- 147 Anonymous, Submission 623, 4. See also Catholic Social Services Victoria, Submission 911, 10.
- 148 Court Network, Submission 927, 13.
- 149 Central Goldfields Shire Council, Submission 498, 5.
- 150 Court Services Victoria, Submission 646, 9–11.
- 151 *Ibid* 11. See also Catholic Social Services Victoria, Submission 911, 10.
- 152 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, v, vii.
- 153 *Ibid* vii.
- 154 *Ibid* 12.
- 155 *Ibid*.
- 156 *Ibid*.
- 157 Court Services Victoria, Submission 646, 11; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50. See also Correspondence from the Magistrates' Court of Victoria to the Royal Commission into Family Violence, 10 February 2016.
- 158 Statement of Newman, 28 July 2015, 15 [81].
- 159 See, eg, Community consultation, Echuca 1, 7 May 2015; Community consultation, Melbourne, 30 April 2015; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, xii–xiv.
- 160 B Turner, Submission 9, 7.
- 161 See, eg, Judicial College of Victoria, Submission 536, 8; Federation of Community Legal Centres, Submission 958, 28; Footscray Community Legal Centre, Submission 472, 10–11.
- 162 Judicial College of Victoria, Submission 536, 8.
- 163 See, eg, Community consultation, Melbourne, 30 April 2015; Dr Renata Alexander, Submission 166, 2.
- 164 Judicial College of Victoria, Submission 536, 7; see also Community consultation, Melbourne, 30 April 2015.
- 165 See, eg, Centre For Rural Regional Law and Justice—Deakin University, Submission 511, 8; Dr Renata Alexander, Submission 166, 2.
- 166 Community consultation, Whittlesea, 29 April 2015.
- 167 Anonymous, Submission 263, 2; Anonymous, Submission 281, 3.
- 168 See also *Criminal Procedure Act 2009* (Vic) s 359.
- 169 Magistrates' Court of Victorian and Children's Court of Victoria, Submission 978, 15.
- 170 *Ibid* 12, 54. Attorney General, The Hon Martin Pakula MP, 'New Magistrates' Court Technology To Protect Victims of Crime' (Media Release, 1 May 2015) < <http://www.premier.vic.gov.au/new-magistrates-court-technology-to-protect-victims-of-crime/> >.
- 171 Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Deakin University, Centre for Regional Law and Justice, 2014) 107.
- 172 *Ibid*.
- 173 *Ibid* 108.
- 174 Magistrates' Court of Victoria, 'Complaints Policy' (2015) 1. <<https://www.magistratescourt.vic.gov.au/sites/default/files/Default/150709%20MCV%20Complaint%20Policy%202015.pdf>>.
- 175 *Judicial Commission of Victoria Bill 2015* (Vic) cl 5–8, 128–130.
- 176 Gelb, above n 103, 75.
- 177 Transcript of Newman, 4 August 2015, 1751 [30]–1752 [21].
- 178 Coroners Court of Victoria, above n 79, 99 [551].

179 Transcript of Sinclair, 4 August 2015, 1774 [7]–[24].

180 *Family Violence Protection Act 2008* (Vic) ss 74 and 76.

181 *Ibid* s 78.

182 *Ibid* s 78(5).

183 Magistrates' Court of Victoria, 'Q24 25 & 26 Consent Without Admission Orders MCV & CCV', Tab 1: Court Location, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

184 Transcript of Sinclair, 4 August 2015, 1774 [9]–[11].

185 Transcript of Rudd, 4 August 2015, 1802 [30]–1803 [1].

186 Transcript of Sinclair, 4 August 2015, 1774 [9]–[11]. See also Transcript of Cooney, 4 August 2015, 1797 [16]–[18]; Transcript of Casey, 4 August 2015, 1775 [28]–[29].

187 Gelb, above n 103, 62, 68.

188 *Ibid* 68.

189 Wangmann, above n 92, 102–3.

190 Transcript of Sinclair, 4 August 2015, 1775 [3]–[6].

191 Transcript of Casey, 4 August 2015, 1777 [14]–[21].

192 *Ibid* 1778 [11]–[17].

193 Transcript of Sinclair, 4 August 2015, 1777 [23]–1778 [10].

194 Statement of 'Jones', 7 August 2015, 12 [48].

195 *Personal Safety Intervention Orders Act 2010* (Vic).

196 *Ibid* s 26.

197 See, eg, *Personal Safety Intervention Orders Act 2010* (Vic) ss 28–9 (mediation assessment), s 31 (termination of mediation if process becomes unsuitable), s 34 (guidelines for suitability of mediation process).

198 Melissa C Tyler and Jackie Bornstein, 'Court Referral to ADR: Lessons from an Intervention Order Mediation Pilot' (2006) 16(1) *Journal of Judicial Administration* 48, 59–60.

199 *Domestic Violence and Protection Orders Act 2008* (ACT) s 25.

200 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response: Final Report*, ALRC Report No 114, NSWLRC Report No 128 (2010) 1062.

201 *Ibid* 1063.

202 *Domestic Violence Act 1995* (NZ) s 45(2). A Protection Order, the New Zealand equivalent of an FVIO, remains in force until it is discharged by the court, see s 47.

203 Safe Steps Family Violence Response Centre, Submission 942, 30.

204 *Family Violence Protection Act Amendment Act 2014* (Vic) s 8.

205 Note that finalisation conditions will not be included if the court is satisfied of various particular circumstances, including for example, the respondent has a cognitive impairment, is a child or possesses a firearm, there are potentially inconsistent child protection or family law orders in place, the affected family member does not consent, etc. See Department of Justice and Regulation, *Family Violence Protection Amendment Act 2014* (22 June 2015) <<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/family+violence+protection+amendment+act+2014>>.

206 *Domestic Violence Act 1995* (NZ) ss 76–7.

207 See, eg, Women's Legal Service Victoria—01, Submission 940, 29, 30.

208 See, eg, *ibid* 41, 42.

209 The Act requires that the court explain a final order when it is made, orally and in writing, including the purpose, terms and effect of the order; the order's effects with respect to children; the consequences of contravention and the fact that the order is an order of the court and the protected person cannot give permission to contravene it: *Family Violence Protection Act 2008* (Vic) s 96. Equivalent provisions also exist for safety notices and interim orders: *Family Violence Protection Act 2008* (Vic) ss 35, 57.

210 Transcript of Newman, 4 August 2015, 1728 [3]–[17], 1752 [12]–[17].

211 Court Network, Submission 927, 18.

212 *Ibid* 15 (emphasis in original).

213 CREATE Foundation, 'Children and Young People in Care Consultation for the Victorian Law Reform Commission' (Victorian Law Reform Commission, March 2010) 5.

214 *Ibid* 9.

215 *Ibid* 12.

216 Statement of Walker, 3 August 2015, 9 [36].

217 CREATE Foundation, above n 213, 5.

218 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.

219 *Ibid* 49–51; Court Network, Submission 927, 15.

220 Crime Statistics Agency, above n 18, 14.

221 InTouch Multicultural Centre Against Family Violence, Submission 612, 38–9.

222 See, eg, *Ibid* 36–9.

223 Anonymous, Submission 70, 1.

224 George and Harris, above n 171, 84. See also Centre For Rural and Regional Law and Justice—Deakin University, Submission 511, 17.

225 *Ibid* 84. See also Centre For Rural and Regional Law and Justice—Deakin University, Submission 511, 17.

226 Women with Disabilities Victoria, Submission 924, 22.

227 Women with Disabilities Victoria, 'Magistrates' Court Disability Access Survey Report' (2015) 6–12.

228 Victorian Equal Opportunity and Human Rights Commission, 'Annual Report 2014–15', 28.

229 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 59; Transcript of Braybrook, 20 July 2015, 801 [4]–[6].

230 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 61.

231 See, eg, Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 22–4.

232 Koori Caucus, Submission 946, 20. Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12.

233 See, eg, Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 18–19; Victorian Gay and Lesbian Rights Lobby, Submission 684, 4–6.

234 Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View' (RMIT University, March 2015) 6.

235 *Ibid*, 60.

236 *Ibid*, 61.

237 *Ibid*, 60.

238 Statement of Davies, 29 July 2015, 2–3 [13]–[17]; Statement of Newman, 28 July 2015, 14 [76]–[77]; Statement of Field, 31 July 2015, 5 [19].

239 Statement of Davies, 29 July 2015, 2–3 [13]–[17].

- 240 Victoria Legal Aid, Submission 919, 28.
- 241 Centre for Innovative Justice, above n 234, 58.
- 242 Statement of Fatouros, 6 August 2015, 7 [30].
- 243 Gelb, above n 103, 37 (citations omitted).
- 244 Victoria Legal Aid, Submission 919, 58.
- 245 Victoria Legal Aid, 'Response to the Royal Commission into Family Violence Notice to Produce' (2015), 17, produced by Victoria Legal Aid in response to the Commission's Notice to produce dated 5 June 2015.
- 246 Ibid 51.
- 247 Victoria Legal Aid, Submission 919, 13.
- 248 Ibid.
- 249 Ibid; Federation of Community Legal Centres, Submission 958, 14.
- 250 Law Institute of Victoria, Submission 832, 12–13; Victoria Legal Aid, Submission 919, 67–8; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 60; Safe Steps Family Violence Response Centre, Submission 942, 32.
- 251 Victorian Law Reform Commission, above n 51, 185.
- 252 Loddon Campaspe Community Legal Centre, Submission 236, 73.
- 253 Ibid.
- 254 George and Harris, above n 171, 113.
- 255 Statement of Cooney, 30 July 2015, 8–9 [35]–[42].
- 256 Statement of Atmore, 3 August 2015, 5 [27].
- 257 Ibid 7 [33].
- 258 Ibid.
- 259 Gelb, above n 103, 17.
- 260 Community consultation, Werribee 1, 11 May 2015; Eastern Community Legal Centre, Submission 582, 9.
- 261 George and Harris, above n 171, 113–14.
- 262 Statement of 'Jones', 7 August 2015, 11 [44].
- 263 Ibid [50].
- 264 George and Harris, above n 171, 115.
- 265 Transcript of Fatouros, 6 August 2015, 2101 [4]–[13].
- 266 Ibid [14]–[25].
- 267 Ibid [29]–2102 [9].
- 268 *Evidence Act 1958* (Vic) s 41.
- 269 Ibid.
- 270 *Family Violence Protection Act 2008* (Vic) s 70. Consent may be either personal or, if the person has a guardian, through the guardian. If the person has a cognitive impairment, the court must also be satisfied that they understand the nature and consequences of consenting and are competent to give evidence.
- 271 *Family Violence Protection Act 2008* (Vic) ss 71–2.
- 272 Community consultation, Werribee 1, 11 May 2015; Judith Grayley—Member for Narre Warren South, Submission 736, 2–3.
- 273 For example, contested hearings can be funded in this way: Victoria Legal Aid, Submission 919, 59.
- 274 Ibid; Statement of Sinclair, 3 August 2015, 4 [24]–5 [27].
- 275 Victoria Legal Aid, 'Family Violence Demand: Proposal to Increase Service Delivery' (13 May 2015), 5, produced by Victoria Legal Aid in response to the Commission's notice to produce dated 5 June 2015.
- 276 Statement of Sinclair, 3 August 2015, 5 [26], [28], 9 [46].
- 277 Federation of Community Legal Centres, Submission 958, 20–5.
- 278 Statement of 'Jones', 7 August 2015, 7.
- 279 Victorian Law Reform Commission, Review of Family Violence Laws, above n 51, 184.
- 280 Crime Statistics Agency, above n 18, 41, 45–6.
- 281 Derived from data provided by Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, Appendix 2. These figures do not include interim orders.
- 282 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, Appendix 2.
- 283 *Magistrates' Court (Judicial Registrars) Rules 2015* (Vic) Part 2.
- 284 Ibid r 15.
- 285 Ibid r 12.
- 286 See, eg, Federation of Community Legal Centres, Submission 958, 19.
- 287 Victoria Legal Aid, Submission 919, 21.
- 288 Gelb, above n 103, 40–41.
- 289 Ibid 41.
- 290 Transcript of Sinclair, 4 August 2015, 1784 [28]–1785 [14].
- 291 Transcript of Casey, 4 August 2015, 1785 [16]–[24], 1785 [31]–1786 [3].
- 292 Australian Women Against Violence Alliance, Submission 838, 22.
- 293 Ibid. The Commission also notes that some of the Commonwealth Government's \$100 million family violence package announced in 2015 has been allocated to legal services: Prime Minister of Australia, The Hon. Malcolm Turnbull MP, 'Women's Safety Package to #StoptheViolence' (Media Release, 24 September 2015).
- 294 Ibid.
- 295 Australian Women Against Violence Alliance, Submission 838, 22–3 (citations omitted).
- 296 State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5.
- 297 Crime Statistics Agency, above n 18, 92.
- 298 Many women reported requiring services at court: see, eg, Community consultation, Melbourne 2, 14 May 2015; Anonymous, Submission 165, 3; Anonymous, Submission 766, 7; Community consultation, Melbourne, 6 May 2015; Anonymous, Submission 439, 5.
- 299 Court Network, Submission 927, 13.
- 300 Community consultation, Shepparton 1, 18 May 2015.
- 301 Eastern Domestic Violence Service Inc, Submission 619, 13.
- 302 Elizabeth Hoffman House Aboriginal Women's Services, Berry Street, WRISC Family Violence Service and InTouch. These programs are funded through one element of the Transition Support (homelessness) funding: Department of Health and Human Services, 'Response to Notice to Produce' (18 January 2016), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.
- 303 For example, Eastern Domestic Violence Service Inc, Submission 619, 15. Assistance with court processes is one of the range of supports which may be provided as part of the outreach role: Department of Health and Human Services, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.

304 Court Network, '2013–14 Annual Report' (2014) 1.

305 Court Network, Submission 927, 12.

306 Court Network, above n 304, 13.

307 Court Network, Submission 927, 12.

308 Women's Health In the North, Submission 637, 16; Women's Health Goulburn North East, 367, 5; Berry Street, Submission 834, 44; Women's Legal Service Victoria—01, Submission 940, 62–3.

309 Berry Street, Submission 834, 44.

310 Court Network, 'Proposal for Enhanced Court Network Service at Sunshine Magistrates' Court' (27 July 2015), 4, provided by Court Network to the Commission, 12 October 2015.

311 Eastern Domestic Violence Service Inc, Submission 619, 5.

312 See, eg, Court Services Victoria, Submission 646, 16; Transcript of Hawkins, 4 August 2015, 1851 [17]–1852 [7]; Transcript of Field, 4 August 2015, 1741 [21]–[23]; Community consultation, Geelong 2, 28 April 2015. See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

313 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

314 Transcript of Broughton, 5 August 2015, 1951 [13]–[27].

315 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

316 Ibid 52–3.

317 See, eg, Magistrates' Court of Victoria, above n 87, 30–1.

318 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 14.

319 Expert roundtable, Melbourne, 23 September 2015.

320 Magistrates' Court of Victoria, 'Family Violence Operating Procedures: Family Violence Programs and Initiatives Unit—Version 2.0' (August 2014), 31, produced by the Magistrates' Court of Victoria in response to Commission's request for information dated 5 June 2015.

321 Ibid 32.

322 Statement of Sinclair, 3 August 2015, 11 [54]–[56].

323 Statement of Newman, 28 July 2015, 13 [74].

324 Centre for Innovative Justice, above n 234, 60 (citations omitted). The Commission also notes the triage processes at the Neighbourhood Justice Centre: see Statement of Walker, 3 August 2015, 3–4 [10]–[13].

325 Coroners Court of Victoria, above n 79, 110.

326 Court Network, above n 310, 4.

327 Community consultation, Geelong 2, 28 April 2015.

328 Statement of Field, 31 July 2015, 10 [42].

329 *Magistrates' Court Act 1989* (Vic) s 18.

330 Magistrates' Court of Victoria, above n 320, 110 [11.1.3].

331 *Family Violence Protection Act 2008* (Vic) ss 166, 169.

332 Magistrates' Court of Victoria, above n 320, 112 [11.2.2].

333 Ibid. We note, however, that the privacy policy on the Magistrates' Court website contemplates access to the court file by non-parties. The policy states that 'Access to court files will not be provided in any circumstances unless so ordered by a magistrate. A party seeking access to information or documentation held on a court file must file a formal application with the registrar at the proper venue of the Court. A magistrate in open court determines this application.' See Magistrates' Court of Victoria, *Privacy* (8 April 2015) <<https://www.magistratescourt.vic.gov.au/privacy>>. Further, we note Practice Direction 7 of 2013 which deals with applications for media access to materials: see Magistrates' Court of Victoria, *Media Access to Information* (25 September 2015) <<https://www.magistratescourt.vic.gov.au/publication/media-access-information>>.

334 *Children, Youth and Families Act 2005* (Vic) s 534. See also *Children, Youth and Families Act 2005* (Vic) s 537.

335 Children's Court of Victoria, *Privacy* (18 December 2015) <<http://www.childrenscourt.vic.gov.au/privacy>>.

336 For an argument in support of specialisation in dealing with sexual offence cases see Centre for Innovative Justice, above n 234.

337 Ibid.

338 Women's Legal Service Victoria—01, Submission 940, 10.

339 Coroners Court of Victoria, above n 79, 5.

340 Ibid, 5; Peninsula Community Legal Centre, Submission 447, 21.

341 State of Victoria, Submission 717, 15.

342 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 64.

343 Ibid 50.

344 Letter from The Hon Daniel Andrews, Premier of Victoria to Judge Gray, State Coroner <[http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vicoria\\_luke+batty.pdf](http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vicoria_luke+batty.pdf)>.

345 *Magistrates' Court Act 1989* (Vic) s 40.

346 Court Services Victoria, Submission 646, 16.

347 For discussion of the use of new technology and information sharing in the US court system, see generally Statement of Antoine, 12 August 2015.

348 See, eg, Department of the Attorney General (WA), *Integrated Courts Management System* (9 November 2015) <[http://www.ar.dotag.wa.gov.au/l/integrated\\_courts\\_management\\_system.aspx?uid=6226-8680-5176-0707](http://www.ar.dotag.wa.gov.au/l/integrated_courts_management_system.aspx?uid=6226-8680-5176-0707)>; Service New South Wales, *NSW Supreme, District & Local Courts Online Registry* <<https://www.service.nsw.gov.au/transaction/nsw-supreme-district-local-courts-online-registry>>; ACT Government, *ACT Courts a Step Closer to More Efficient, Paperless System* (10 December 2014) <[http://www.cmd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/corbelle/2014/act-courts-a-step-closer-to-more-efficient,-paperless-system](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbelle/2014/act-courts-a-step-closer-to-more-efficient,-paperless-system)>.

349 Statement of Walker, 3 August 2015, 10.

350 Victorian Auditor-General's Office, 'Connecting Courts—The Integrated Courts Management System' (June 2009).

351 Letter from The Hon Daniel Andrews MP, Premier of Victoria, above n 344. See also Statement of De Cicco, 7 August 2015, 16–18 [48]–[57].

352 Magistrates' Court of Victoria, above n 87.

353 Magistrates' Court of Victoria, 'Capping of Family Violence Intervention Order Lists at Magistrates' Court of Victoria sitting at Broadmeadows' (Practice Direction No 9 of 2015, 2015).

354 Ibid.

355 Victoria Legal Aid, above n 275, 3–4.

356 Department of Justice and Regulation, 'The Access to Justice Review' (22 October 2015) <<http://www.vic.gov.au/news/the-access-to-justice-review.html>>.

357 We note that the 2015–16 Budget allocated an additional \$3.3 million for legal assistance in 2015–16 for one year. State of Victoria, above n 296, 5.

358 InTouch Multicultural Centre Against Family Violence, Submission 612, 38–9.

359 *Criminal Procedure Act 2009* (Vic) ss 367–8.

360 See also our recommendations with respect to 'body worn cameras' in Chapter 15.

361 Magistrates' Court of Victorian and Children's Court of Victoria, Submission 978, 15.

362 George and Harris, above n 171, 62.

363 Statement of Field, 31 July 2015, 8 [31].

364 Letter from Peter Lauritsen, Chief Magistrate of the Magistrates' Court Victoria, above n 45.

365 Transcript of Walker, 4 August 2015, 1838 [10]–1840 [13], Statement of Walker, 3 August 2015, 7–8 [26]–[31]. See, eg, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 15–16. We also note the form has been positively reviewed: see, eg, McAuley Community Services for Women, Submission 480, 14–15.

366 Magistrates' Court of Victoria, above n 63.

367 Magistrates' Court of Victoria, *Application for a family violence intervention order FVIO1* (2 August 2012) <<https://www.magistratescourt.vic.gov.au/forms/application-family-violence-intervention-order-fvio1>>. See also Commission for Children and Young People, Submission 790, 17.

368 *Family Violence Protection Act 2008* (Vic) s 50.

369 *Magistrates' Court (Family Violence Protection) Rules 2008* (Vic) s 7.01.

370 Women's Legal Service—01, Submission 940, 11, 48; Statement of Douglas, 20 July 2015, 3–4 [18]; Broadmeadows Community Legal Service, Submission 791, 10.

371 See, eg, *Vexatious Proceedings Act 2014* (Vic).

372 See, eg, *Crimes Act 1958* (Vic) s 314, *Ibid* s 3.

373 *Civil Procedure Act 2010* (Vic) s 42, *Magistrates' Court General Civil Procedure Rules 2010* (Vic) 4.10; *Supreme Court (General Civil Procedure) Rules 2015* (Vic) 4.10 which require a proper basis certification to be filed by a legal practitioner in civil proceedings.

374 *Legal Profession Uniform Law Application Act 2014*, s 25.

375 County Court of Victoria, Submission 835, 7 [16.5].

376 See Beau Kilmer et al, 'Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota's 24/7 Sobriety Project' (2013) 103(1) *American Journal of Public Health* e37, 1; Steven Alm, 'A New Continuum for Court Supervision' (2012) 91 *Oregon Law Review* 1181, 1184; Statement of Miller, 15 July 2015, 16 [72]–[73]; Statement of Freiberg, 30 July 2015, 6 [34]–[35]; Angela Hawken and Mark Kleiman, 'Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE' (National Institute of Justice, 2 December 2009) 4.

377 See, eg, Transcript of McCormack and Tucker, 3 August 2015, 1547 [9]–1548 [25].

378 *Family Violence Protection Act* (Vic) s 75, 81(2)(a), (f)–(h).

379 For more information on the nature of police processes see Chapter 14.

380 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 200, 14, 991.

381 Rachael Field, 'Using the Feminist Critique of Mediation to Explore "the Good, the Bad and the Ugly" Implications for Women of the Introduction of Mandatory Family Dispute Resolution in Australia' (2006) 20 *Australian Journal of Family Law* 45, 75–6.

382 For parallel arguments in relation to mediation in family law, see *ibid* 50; Australian Law Reform Commission and New South Wales Law Reform Commission, above n 200, 14, 991.

383 See Judicial College of Victoria, *Family Violence Resources* (11 November 2014) <<http://www.judicialcollege.vic.edu.au/publications/family-violence-resources>>. See also Statement of Hyman, 5 August 2015, 8 [41]–[42].

384 Gelb, above n 103, 75.

385 Sentencing Advisory Council, 'Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report' (December 2015) 15 [2.45]–[2.49].

386 *Family Violence Protection Amendment Act 2014* (Vic).

387 See generally Statement of Wilson, 12 October 2015, 3–5 [12]–[14].

388 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 32.

389 Statement of Calkin, 24 July 2015, 56 [11].

390 *Court Services Victoria Act 2014* (Vic).

# 17 Offences and sentencing

## Introduction

This chapter explores the prosecution and sentencing of offences that take place in the context of family violence.

Responses to family violence in Victoria have been marked by a tendency to dismiss, trivialise and misunderstand family violence. In the criminal justice system, this view has sometimes been manifested in a reluctance to charge or prosecute family violence-related offences, and the imposition of inadequate or inconsistent sentences. Aside from putting women and children at risk in particular cases, these attitudes and practices, particularly when publicised, can reinforce community attitudes which trivialise violence against women. Fortunately, there are some indications that attitudes and practices are improving. The purpose of this chapter is to consider how best to encourage that trend.

The first section of this chapter provides an overview of the context and current practice for the sentencing of family violence-related offences. This section also includes discussion of 'defensive homicide' and defences that may apply where a victim who has experienced family violence commits homicide in response to that violence. It explores features of criminal proceedings that are of particular relevance to family violence-related offending, including bail, pre-sentence reports and victim impact statements.

The second section of this chapter outlines the various issues that were raised in evidence before the Commission. The Commission heard concerns about the way in which the criminal law deals with women who commit homicide in response to family violence. Submissions also highlighted gaps in data for family violence-related offending and made suggestions for improving bail, different approaches to sentencing and potential changes to offences and sentencing laws.

Many submissions received by the Commission commented on sentencing practices. A range of submissions considered that sentences for family violence offenders were inadequate or inconsistent. Several favoured greater reliance on longer custodial sentences. Other submissions did not consider such sentences to be a desirable or effective means of protecting the community or punishing, deterring or rehabilitating offenders.

The Commission is of the view that changes to sentencing provisions and the creation of new offences can often have more of a symbolic than practical effect. Whatever laws we have will only be as effective as those who enforce, prosecute and apply them. Improving these practices, through education, training and embedding best practice and family violence specialisation in the courts, is likely to be more effective than simply creating new offences or changing sentencing laws. The Commission readily accepts that there will be cases where a substantial term of imprisonment is necessary and appropriate. Nonetheless, evidence on the limited effectiveness of imprisonment as a means of deterring offenders, rehabilitating offenders and reducing crime highlights the complexity of these issues.

The Commission believes that while the introduction of new offences or new sentencing powers is not necessary, there is scope to improve current practices and processes. In the final section of this chapter, after considering current practice and the issues raised by stakeholders, the Commission makes a number of recommendations.

The Commission's recommendations include ensuring that offences committed in the context of family violence are appropriately 'flagged', amending current law and practice in family violence-related bail matters and commissioning research into family violence-related sentencing practices. Finally, the Commission recommends that the Director of Public Prosecutions consider identifying a suitable appeal case for the Court of Appeal for the issue of a guideline judgment on sentencing for family violence offences.

Some of the issues raised with the Commission relate to wider questions about the experience and needs of victims in the criminal justice system. At the time of this report, the Victorian Law Reform Commission was preparing a report on the role of victims in the criminal trial process. The VLRC's consultation paper makes specific reference to victims of family violence.<sup>1</sup> It also raises more general questions which are relevant to victims of family violence involved in criminal proceedings. The Commission proposes that several of the issues raised in relation to victims of crime should be dealt with as part of that broader inquiry.

## Context and current practice

This section outlines the context and current practice for the sentencing of family violence-related offences. It sets out the offences that a perpetrator of family violence may be charged with, sentencing options that may apply and the purposes and principles of sentencing. It also details what is known about current charging, prosecution and sentencing practices.

This section then explores certain aspects of criminal proceedings that are relevant to offences that occur in the context of family violence. It considers family violence-related defences, particularly as they relate to women who commit homicide in response to family violence. This section also discusses features of the trial and sentencing process relevant to family violence offences, namely bail, victim impact statements, pre-sentence reports and parole.

## Relevant offences

Family violence offences fall into two main categories. First, there are family violence intervention order (FVIO) and family violence safety notice (FVSN) contravention offences and secondly, there are crimes committed in a family violence context.

### Family violence intervention orders and safety notices

The *Family Violence Protection Act 2008* (Vic) contains several distinct offences for FVIO and FVSN contraventions. These offences occur when someone breaches the conditions of an FVIO or an FVSN.

First, there are basic summary offences<sup>2</sup> for contravening an FVIO or FVSN, punishable by up to two years' imprisonment and/or a fine.<sup>3</sup> In addition, there are indictable offences triable summarily for contraventions with intent to cause (or knowledge that the contravention will cause) harm (including mental harm) or fear for safety; and an indictable offence for persistent contravention of an FVIO or FVSN where three contraventions (in relation to the same order, notice and/or protected person) occur within 28 days, and on each occasion the contravener knew, or should have known, that they were in breach of the order or notice. These indictable offences are punishable by up to five years' imprisonment and/or a fine.<sup>4</sup>

Whether a person's conduct contravenes an FVIO or FVSN will depend on the conditions of the order or notice. When making an FVIO, a court can impose any conditions that appear necessary or desirable in the circumstances.<sup>5</sup> These may include (but are not limited to) conditions such as prohibiting the commission of family violence, prohibiting the respondent from approaching or contacting the protected person and revoking, suspending or cancelling the respondent's firearms authority.<sup>6</sup> Family violence safety notices may include all but firearms revocation, suspension and cancellation conditions.<sup>7</sup> There are additional offences under the Family Violence Protection Act which attract a fine, such as failing to attend counselling and certifying a false document.<sup>8</sup>

## Family violence-related crimes

A range of crimes against the person, as well as property and dishonesty offences, may be committed in the context of family violence.

Crimes against the person may include physical and sexual offences such as rape, incest and indecent assault, common and aggravated assault, intentionally or recklessly causing serious injury, and homicide offences; as well as offences such as threatening to kill or cause serious injury, kidnapping and stalking.<sup>9</sup> Property and dishonesty offences include theft, burglary and aggravated burglary, destruction of property and threatening to destroy property.<sup>10</sup>

Matters of substantial gravity or complexity are commonly heard in the County Court, and the most serious and complex offences (including murder and related offences) are heard in the Supreme Court.<sup>11</sup> Less serious offences are typically heard in the Magistrates' Court. The decision to try an indictable offence summarily (that is, in the Magistrates' Court) can only be made if the accused consents, and the court considers it appropriate in the circumstances (which may include the nature of the offence, the adequacy of available sentences, whether there is a co-accused and any other relevant matters).<sup>12</sup>

## Sentencing options

When a person commits an offence involving family violence, a court has a number of sentencing options.<sup>13</sup> A court can also impose orders in addition to the sentence (ancillary orders). Sentencing options and orders in addition to the sentence are described briefly below.

The *Sentencing Act 1991* (Vic) arranges the different sentencing options hierarchically, so that a more serious sentencing option may not be imposed unless the purpose of the sentence cannot be achieved by a less serious option.<sup>14</sup> Custodial sentences must be imposed for certain offences, including manslaughter in circumstances of gross violence, and causing serious injury in circumstances of gross violence.<sup>15</sup>

### Custodial sentences

Family violence-related offences and FVIO/FVSN contravention offences may attract a term of imprisonment. There are also specific custodial sentences for particular matters, such as drug treatment orders imposed by the Drug Court, residential treatment orders for people with intellectual disabilities found guilty of certain offences, secure treatment orders for people with mental health disabilities, and youth justice and youth residential centre orders.<sup>16</sup>

'Baseline sentences' have recently been introduced in Victoria. Baseline sentences are specified prison sentences that the Victorian Parliament intends as the median sentence for seven nominated offences, including murder. Victorian courts must sentence a charge of a baseline offence in accordance with that intention if the offence is committed on or after 2 November 2014. The scheme still allows a court the discretion to impose a sentence higher or lower than the baseline sentence for a charge that is either more serious or less serious than the charge that receives the median sentence.<sup>17</sup>

The Court of Appeal found in *DPP v Walters*<sup>18</sup> that the baseline sentencing provisions in the Sentencing Act were 'incapable of being given any practical operation'. On 24 November 2015 the Sentencing Advisory Council received a request from the Attorney-General to provide advice on sentencing guidance in Victoria. The Sentencing Advisory Council is due to report to the Attorney-General no later than 15 April 2016.<sup>19</sup>

## Community correction orders

In 2012, community correction orders were introduced, replacing a variety of non-custodial sentences such as home detention and suspended sentences. The CCO is a broad, flexible order which allows an offender to remain in the community subject to certain conditions, such as orders requiring the offender to:

- ▷ reside at or be excluded from particular places or areas
- ▷ refrain from contacting or associating with certain persons or classes of persons
- ▷ undergo drug, alcohol or mental health treatment
- ▷ adhere to a curfew or electronic monitoring (though an electronic monitoring condition cannot be made in the Magistrates' Court)
- ▷ be supervised, monitored or managed by Corrections Victoria and/or
- ▷ be subject to ongoing judicial monitoring, including by requiring them to reappear before the court at a specified date or dates to enable the court to review their compliance with the order.<sup>20</sup>

An offender who breaches a condition of a CCO may be resentenced for the original offence (including for a term of imprisonment) and may face up to three months' additional imprisonment for the breach.<sup>21</sup>

Sometimes a CCO will be imposed in combination with a custodial sentence and/or a fine. A CCO in the County or Supreme Courts may be imposed for up to two years, or the maximum term of imprisonment for the offence, whichever is greater. In the Magistrates' Court, a CCO may be imposed for up to two years for a single offence, four years for two offences, and five years for three or more offences.<sup>22</sup>

## Fines

A court may also impose a fine, either on its own or in combination with another kind of sentence. Provisions potentially relevant to family violence matters include section 52 of the Sentencing Act, which requires a court considering a fine to take into account the financial circumstances of the offender and the burden that paying the fine would impose; and section 54, which allows a court fixing the amount of a fine to consider (among other things) any loss, damage to or destruction of property suffered as a result of the offence. The imposition of fines is discussed further below.

## Dismissal, discharge and adjourned undertaking

At the lowest level of the sentencing hierarchy are orders dismissing, discharging or releasing on adjournment. The Sentencing Act enables the court to release an offender convicted of an offence, with or without recording a conviction, on the basis of conditions. The standard conditions are that the offender undertake to attend the court if or when required, and be of good behaviour during the term of the adjournment (up to five years). The court has discretion to impose other special conditions, including that the offender complete programs relevant to the offending.<sup>23</sup>

## Orders in addition to sentence

A sentencing court may make additional (or ancillary) orders when it imposes a sentence. Some additional orders which may be relevant to family violence matters include compensation and restitution orders, by which the offender is ordered to compensate the victim for lost or stolen property, and/or injuries or expenses that arose from the offending;<sup>24</sup> and orders that a sex offender be registered, which entails mandatory reporting obligations and other restrictions.

## Purposes and principles of sentencing

Sentencing of adult offenders in Victoria is underpinned by basic principles and considerations. These are relevant to understanding the different sentencing options that may apply to family violence offences, as well as weighing proposals for reform.<sup>25</sup>

## General principles and purposes of sentencing

In Victoria, the purposes of sentencing are enshrined in section 5 of the Sentencing Act, which stipulates that sentences may only be imposed in order to:

- ▷ punish the offender (to an extent, and in a manner, which is just in the circumstances)
- ▷ deter the offender or others from committing the same or similar offences
- ▷ establish the conditions to facilitate rehabilitation
- ▷ denounce the offending conduct
- ▷ protect the community from the offender
- ▷ achieve a combination of two or more of those purposes.<sup>26</sup>

As well as the purposes of sentencing, section 5 sets out the considerations the court must take into account in sentencing. These include:

- ▷ the maximum penalty for the offence, and current sentencing practices
- ▷ the nature and gravity of the offence
- ▷ the offender's culpability, degree of responsibility and character history
- ▷ the impact of the offence on the victim, the victim's personal circumstances, and any injury, loss or damage directly resulting from the offence
- ▷ the presence of any aggravating or mitigating factor concerning the offender, or of any other relevant circumstances.<sup>27</sup>

Other considerations may also be taken into account, including the personal circumstances of the offender which may make prison more burdensome, or which may alter the weight given to the purposes of sentencing (for example, a relevant intellectual disability or mental health illness),<sup>28</sup> or matters arising from the proceeding (including, for example, a guilty plea showing remorse).

General principles of sentencing have also developed through legislation and the common law and include:<sup>29</sup>

- ▷ parsimony: the sentence must not be more severe than is required to serve its purposes
- ▷ proportionality: the punishment must reflect the gravity of the offending
- ▷ parity: ordinarily, similar sentences should be imposed for similar offending in similar circumstances.

There are also additional sentencing principles that apply to people who have been convicted for serious sexual or violent offending.<sup>30</sup>

The purposes, principles and considerations that apply to the sentencing of young offenders are quite different. Rehabilitation is the paramount consideration, and relevant considerations include the need to strengthen and preserve a child's relationship with their family and the desirability of the child's living at home and continuing their education, training or employment.<sup>31</sup> Issues specific to young people who use family violence are considered in Chapter 23.

## Principles specific to sentencing family violence offenders

The Supreme Court of Victoria's submission to the Commission highlighted a number of Victorian cases which are said to establish principles for sentencing family violence offenders. In particular, a number of Court of Appeal judgments have emphasised:

- ▷ the importance of deterrence and denunciation, particularly in light of the unique context of family violence<sup>32</sup>
- ▷ the significant and broad-reaching effects of family violence, which 'are not confined to physical injury' but extend to 'long-lasting psychological trauma', which may impact on the victim's finances and job status<sup>33</sup>
- ▷ the importance of effectively enforcing intervention orders<sup>34</sup>
- ▷ that any claim that intimate partner violence is a less serious form of violence (including the assertion that the victim's level of fear was less than it would have been had the attacker been a stranger) must be rejected.<sup>35</sup>

The Commission was also provided with the reasons of Maxwell P, Priest JA and Beale AJA in the Court of Appeal decision *Uzun v The Queen*.<sup>36</sup> In that case, the applicant, at the time subject to an FVIO, forced entry into his wife's home; threatened her and one of their children with weapons; and ultimately led police on a car chase before his vehicle collided with another car. He was convicted of multiple offences and sentenced to 10 years' imprisonment with an eight-year non-parole period.

The applicant sought leave to appeal against his conviction and sentence. His counsel emphasised that the offending did not cause physical injuries, took place over a short time and that he still had his family's support. In refusing leave to appeal, the court noted the applicant's extensive criminal history (most of which involved family violence against his wife and children) and the need to deter the applicant. Priest JA quoted with approval a passage in *Marrah v The Queen*,<sup>37</sup> which includes the following:

The gravity of the offending was aggravated by the fact that the applicant was at the time the subject of an intervention order, which he flagrantly disregarded. Offending of this nature is too often perpetrated by men whose response to difficulties in a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. The sentences must convey the unmistakable message that male partners have no right to subject their female partners to threats of violence. The sentences must be of such an order as to strongly denounce violence within a domestic relationship.<sup>38</sup>

## Charging and prosecution of family violence-related offences

The Sentencing Advisory Council reported that from 2009–10 to 2014–15, the percentage of police-recorded family violence incidents where charges were laid increased, from 22.3 per cent ( $n=7944$ ) in 2009–10 to 38.2 per cent ( $n=27,058$ ) in 2014–15.<sup>39</sup> Assistant Commissioner, Dean McWhirter, Family Violence Command, Victoria Police, told the Commission that over a third of charges for crimes against the person in 2013–14 arose from family violence incidents.<sup>40</sup> Police practices are considered further in Chapter 14.

The Commission also heard from the Director of Public Prosecutions, Mr John Champion SC, as to the Victorian Office of Public Prosecutions' practice of recording family violence-related matters on its case-management system.<sup>41</sup> Mr Champion was able to confirm in his statement, for example, that over the last three reporting years, approximately 1200 matters (or 'between 400 and 500' matters each year) prosecuted by the Victorian Public Prosecution Service were nominated as 'family violence matters' by the solicitor with conduct of the file. The offences involved 'were a mixture of homicides, assaults and sexual offences, as well as substantive breaches of intervention orders'.<sup>42</sup> The 2014–15 Annual Report from the OPP noted that 16 per cent ( $n=421$ ) of 2619 matters prosecuted by the DPP in 2014–15 involved family violence.<sup>43</sup>

In terms of prosecutions for contravention offences specifically, the 2015 Sentencing Advisory Council report indicates that the number of sentenced contravention charges (including contravention intending to cause harm or fear for safety) increased from 3850 in 2009–10 to 8787 in 2014–15. As a proportion of FVIOs, the contravention rate increased from one contravention per 4.6 FVIOs to one contravention per 3.1 FVIOs. Charges for persistent contravention (which came into effect in April 2013) increased from 22 in 2012–13 to 1239 in 2014–15.<sup>44</sup>

## Current sentencing practices

### Sentencing for intervention order and safety notice contraventions

The Sentencing Advisory Council has, through an initial report in 2009, and subsequent monitoring reports in 2013 and 2015, monitored sentencing practices for FVIO and FVSN contraventions.<sup>45</sup>

The 2013 report considered sentences in the Magistrates' Court within two reference periods: July 2004 to June 2007 and July 2009 to June 2012. It did not consider practices in relation to the new offences introduced to the Family Violence Protection Act in 2012 (sections 37A, 123A and 125A).

For FVIO contraventions, and comparing the two reference periods, the report found a shift away from financial penalties towards sentences 'with greater potential for some form of intervention in the lives of offenders', and added that 'this appears to have resulted from a change in sentencing practices, rather than a change in the nature of the contravention behaviour', and to be an FVIO-specific trend, rather than a court-wide sentencing trend. The use of community orders increased by 9.1 per cent and, while the use of custodial sentences remained stable, the average length of sentences increased from 2 to 2.9 months.<sup>46</sup>

The 2015 report was published in December last year. This again covered two reference periods: July 2009 to June 2012, and July 2012 to June 2015. Key findings included increases in the use of custodial sentences for FVIO and FVSN contraventions (of 4.1 and 1.8 per cent respectively); increases in the use of community sentences, including CCOs (of 5.1 and 10.2 per cent respectively); and decreases in the use of low-end orders, including adjourned undertakings (of 3.7 and 2.4 per cent respectively).<sup>47</sup>

Use of the new contravention offences (persistent contravention/contravention intending to cause harm or fear for safety) which began operating in 2013 has steadily increased, and aggravated contravention offences are more likely than non-aggravated contraventions to attract imprisonment or a CCO, and less likely to receive a fine or low-end order, reflecting 'the added criminality encompassed by those charges'.<sup>48</sup> Contraventions which were sentenced alongside ('co-sentenced' with) another criminal offence were more likely to receive a sentence of imprisonment or a CCO.

In these respects the trend towards higher end sentencing which the Sentencing Advisory Council observed in 2013 has continued. Nonetheless, the report indicates some continued use of low-end orders.

For example, in cases of contraventions of FVIOs where there was no other offence charged (contravention-only cases), fines and low-end orders were the most frequently used sentence types 'by a very substantial margin': in 2014–15, 78.4 per cent of contravention-only cases received a fine or low-end order.<sup>49</sup> The use of fines in FVIO contraventions increased by 3.7 per cent between the two reference periods.

Some 66.4 per cent of FVIO contraventions intending to cause harm or fear for safety were sentenced by either fine (36.5 per cent) or low-end order (29.9 per cent) if there was no co-sentenced criminal offence. A majority (61.9 per cent) of persistent breach offences received a fine (39.1 per cent) or low-end order (22.8 per cent).<sup>50</sup>

The Sentencing Advisory Council is in the final stages of a report on prior and subsequent offending of offenders sentenced for contravening family violence orders. This is likely to further illuminate sentencing trends for contravention offences, prior offending patterns, re-offending patterns and factors associated with re-offending.<sup>51</sup>

The Commission also acknowledges the Crime Statistics Agency's work, commissioned by us on the characteristics of perpetrators of family violence who have repeated contacts with police. These findings are considered in Chapters 15 and 18.

### **Sentencing for general criminal offences**

Sentencing trends for general criminal offences (like physical and sexual assault, burglary, property damage) are less clear. This is largely because it is difficult to determine when these general criminal offences are related to family violence.

Although the monitoring reports can identify cases involving both a contravention charge and a general criminal offence charge, they cannot confirm whether the general charge relates to the same event as the contravention, or even to family violence.

More broadly, this means that the Sentencing Advisory Council is not able to compare, on a large scale, sentencing trends for non-contravention offences in a family violence context with trends for the same offences outside family violence. Asked about the viability of such a comparison, Emeritus Professor Arie Freiberg AM, Chair of the Sentencing Advisory Council, described it as 'impossible', because it would require manual analysis of a large volume of individual cases. He continued:

... we don't have a mechanism in Victoria of taking an offence such as infliction of injury, serious injury, and identifying whether that's a family violence offence or not. Unless you went through all of those cases—and we don't have the capacity; I don't think anyone has done that ...<sup>52</sup>

In some other states, differences in the way offences are classified and recorded have made that comparison easier. A 2015 Tasmanian study of convictions from 2004–05 to 2013–14 found that, for example, for the charge of common assault, the proportion of custodial sentences in family violence matters was higher (12.8 per cent) than in non-family violence matters (8.4 per cent), and the use of fines in family violence matters was lower (22.4 per cent against 32.5 per cent).<sup>53</sup>

In contrast, a study conducted by Dr Christine Bond, co-authored by Dr Samantha Jeffries, looked at a population of cases sentenced in the New South Wales lower courts, and found that 'when sentenced under statistically similar circumstances domestic violence offenders are less likely to be sentenced to prison', and 'of those imprisoned, domestic violence offenders received significantly shorter sentence terms' (on average, 21 days less).<sup>54</sup> Dr Bond concluded that these findings suggest that 'crimes committed within intimate or familial relationships are treated more leniently'.<sup>55</sup> However, another NSW study published in 2015 by the NSW Bureau of Crime Statistics and Research, looking at prison penalties or serious assaults, concluded that 'there is no evidence that serious non-domestic assault matters are dealt with more harshly than serious domestic assault matters'.<sup>56</sup> In fact, the report found that Indigenous offenders found guilty of serious family violence-related assault are more likely to be sentenced to prison than other violent offenders.<sup>57</sup>

Recent practices have sought to better identify the relationship between a criminal offence and family violence in Victoria. For example, there is now a mandatory field on Courtlink (the Magistrates' Court's case-management system) to indicate when a criminal matter is family violence-related.<sup>58</sup> There is also some auto-population of data between LEAP and Courtlink.<sup>59</sup>

However, because there are several intermediate steps between charging and sentencing—for example, the matter may be transferred to the Office of Public Prosecutions; charges may be dropped, combined or upgraded on the basis of analysis, investigation or other practical considerations; and the matter may be transferred from the Magistrates' Court to the higher courts—it is likely to be difficult to marry charged offences with subsequent sentences for those offences.

Deficiencies in current data-collection and research practices, including those relating to perpetrators, are also explored in Chapter 39.

## Family violence-related defences

Other parts of this chapter focus on the offences and sentencing options that apply to perpetrators of family violence. This section looks at family violence-related defences which attempt to take into account the experiences of victims of family violence victims who commit homicide.<sup>60</sup> This section outlines the ways in which these defences operate.

### Defensive homicide

In 2005, the Victorian Parliament amended the *Crimes Act 1958* (Vic) to include the new offence of 'defensive homicide'. The amendment was a response to a Victorian Law Reform Commission report.<sup>61</sup> The offence of defensive homicide was made out if a person believed that their actions (resulting in the victim's death) were necessary to defend themselves, but could not demonstrate reasonable grounds for that belief (and so fell short of self-defence).<sup>62</sup>

Defensive homicide was intended to apply in situations where a killing occurred in the context of family violence, and the accused (a victim of family violence) genuinely believed that their actions had been necessary, even though that belief was not objectively reasonable. However, the overwhelming majority of defensive homicide convictions between 2005 and 2014 were against men, many of whom did not have a family relationship with their victim. To that extent, defensive homicide operated in an unintended manner.<sup>63</sup> The offence has now been abolished by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic). This Act also enacted the self-defence and duress provisions, as well as the jury directions provisions discussed next.<sup>64</sup>

### Self-defence and duress

A person accused of an offence may claim (among other things) that they acted in self-defence or under duress. Once these defences are raised, it is for the prosecution to disprove them beyond reasonable doubt. If they cannot do so, the defendant is entitled to be acquitted.

The self-defence provisions provide that a person is not guilty of an offence if they believed that their actions were necessary in self-defence, and if that conduct was a reasonable response to the circumstances as the defendant perceived them.<sup>65</sup>

The duress provisions provide that a person is not guilty of an offence if they reasonably believed that a threat of harm was made that would have been carried out unless the offence was committed; and carrying out the offence was the only reasonable way to avoid the threatened harm; and the conduct was a reasonable response to the threat.<sup>66</sup>

In both cases, special provisions can apply if there is a context of family violence. If self-defence is raised in circumstances of family violence, a person may believe their conduct is necessary, and the conduct may be a reasonable response, even if they are responding to harm that is not immediate, and even if their response involves the use of force in excess of the force involved in the harm or threatened harm.<sup>67</sup>

## Family violence evidence provisions

In the case of self-defence, evidence of family violence may be relevant in determining whether the accused believed their conduct was necessary and whether their conduct was a reasonable response.

If duress is raised in the context of family violence, evidence of family violence may be relevant to determining whether a person acted under duress.<sup>68</sup>

In both cases, section 322J of the Crimes Act provides that evidence of family violence regarding a person may include:

- ▷ evidence as to the history of the relationship between that person and a family member, the cumulative effect (including psychological effect) of the violence on the person subject to it, and social, cultural or economic impacts on the victim of family violence
- ▷ general evidence about the nature and dynamics of relationships affected by family violence, and the psychological effect and social, cultural or economic impacts of violence on people who are, or have been, in relationships affected by family violence.<sup>69</sup>

## Jury directions on family violence

An integral role for judges in jury trials is to provide directions to the jury to assist them in properly determining whether the accused is guilty or not. Judges are often assisted by the prosecutor and defence counsel in determining when and how to direct the jury. The *Jury Directions Act 2015* (Vic) was enacted to assist judges and practitioners in performing this function. It contains provisions specific to trials where self-defence or duress are raised in circumstances of family violence.

The Act provides for the trial judge to direct the jury on matters of family violence if the defendant or their barrister requests it (or, if the defendant is unrepresented, the court considers it necessary). The direction may include, for example, explaining that:

- ▷ family violence is not limited to physical abuse
- ▷ family violence may be constituted by a single act, or a pattern of behaviour 'which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial'
- ▷ 'people may react differently to family violence', and it is not uncommon for people who have been subjected to family violence to 'stay with an abusive partner after the onset of family violence', to leave and then return to the abusive partner, or to refrain from reporting the violence
- ▷ a person's reaction to family violence may be influenced by the violence itself, and/or by personal, cultural, social and economic factors
- ▷ evidence that the accused assaulted the victim on a previous occasion does not, as a matter of law, mean that they could not have been acting under duress or in self-defence in relation to the charged offence.<sup>70</sup>

## Features of the trial and sentencing process

This section outlines various features of the trial and sentencing process that are relevant to the prosecution and sentencing of family violence offences: bail, victim impact statements, pre-sentence reports and parole.

### Bail

A person who is charged with a criminal offence and held in custody may apply for bail.<sup>71</sup> Conditions may be imposed on the accused for the duration of the bail period. For minor offences, police will usually serve an accused with a summons to appear in court at a given date. Bail is only relevant where a person is taken into custody pending the determination of proceedings against them.<sup>72</sup>

Bail conditions can include requirements that an accused report to police, adhere to a curfew, refrain from contacting witnesses, reside at a nominated address, and participate in specified rehabilitation or treatment programs.<sup>73</sup>

There is a general presumption that an accused person should be granted bail. This is subject to statutory exceptions for particular offences or circumstances. Bail may also be refused where there is an 'unacceptable risk' that the person will fail to surrender themselves into custody, commit an offence while on bail, endanger the safety or welfare of members of the public, interfere with witnesses or otherwise obstruct the course of justice.<sup>74</sup> These same 'unacceptable risk' considerations govern decisions about bail conditions.

In some cases, the presumption of bail does not apply to FVIO/FVSN contraventions. This means that it is for the accused to show why their detention in custody is not justified. This is the case where a bail applicant has been charged with contravening an FVIO/FVSN and:

- ▷ within the last 10 years, has been convicted or found guilty of an offence which involved the accused using or threatening to use violence, or
- ▷ on a separate occasion, the accused used or threatened to use violence against the person who is the subject of the order, whether or not a conviction, finding of guilt, or criminal charge resulted from that use or threatened use.<sup>75</sup>

Where bail is refused, the accused will be remanded in custody. Some programs and services available to family violence perpetrators in remand are discussed on Chapter 18.

### **Victim impact statements**

Sentencing courts must take into account the impact of the crime on the victim, and the victim's personal circumstances. A victim may make a victim impact statement, either by statutory declaration alone or accompanied by oral evidence. The statement may be made on a victim's behalf if they are considered unable to make it themselves, either because they are under 18 or for any other reason.<sup>76</sup>

Victim impact statements usually describe the effect the offence has had on the victim's life, including any injury, loss or damage suffered by the victim as a direct result of the offence, and may include photographs, drawings, poems or other material. They may be accompanied by a medical report made and signed by a medical expert which attests to the medical impacts of the offending.<sup>77</sup>

The statement may be read aloud during the sentencing process, and alternative arrangements (including the use of screens or broadcasting from a remote location) may be made both for that purpose, and if the victim is examined/cross-examined.<sup>78</sup>

As well as helping judges to understand the gravity and impacts of the offence, a victim impact statement may have a therapeutic purpose, allowing a victim to tell their story, including in the presence of the perpetrator.

The role of victims in family violence proceedings and principles of restorative justice are considered further in Chapter 22.

### **Pre-sentence reports**

If a court finds a person guilty of an offence it may, before imposing a sentence, order a pre-sentence report.<sup>79</sup> When considering imposing a community correction order, the court must (unless the only condition on the CCO is an unpaid community work condition of less than 300 hours) order a pre-sentence report in order to establish the person's suitability for the order, establish that any necessary facilities exist, and obtain advice about the most appropriate conditions to attach. These reports can incorporate observations about risks of family violence.<sup>80</sup> Drug and alcohol assessment reports may also be ordered prior to making a CCO if a court is satisfied that an offender had a drug and/or alcohol dependency that contributed to their criminal behaviour.<sup>81</sup> When determining whether to impose an electronic monitoring condition, the court must have regard to a pre-sentence report. The joint submission from the Centre for Forensic Behavioural Science, Swinburne University of Technology and the Victorian Institute of Forensic Mental Health (Forensicare) explained that when individuals appear at court for family violence-related offences, and the offender's psychiatric or psychological health and wellbeing is in issue, judges can seek a specialist forensic mental health assessment from Forensicare to assist in sentencing. According to the submission, such requests are routine for a variety of offences, but Forensicare data suggest this service is under-used in family violence-related matters.<sup>82</sup>

## Parole

Parole is the conditional release of a person from prison while they remain under sentence. Decisions whether or not to grant parole are made by the Adult Parole Board. If the sentence is longer than a year, courts may fix a non-parole period (and if longer than two years, usually will do so, except in specific circumstances), after which the offender will be eligible to be considered for release on parole. Parolees must comply with standard supervision and reporting obligations and travel and residence restrictions. Further conditions may also be fixed in relation to drug and alcohol testing, treatment for medical issues, curfews and other restrictions on liberty.<sup>83</sup>

## Challenges and opportunities

This section sets out the main issues that were raised with the Commission in relation to the prosecution and sentencing of family violence—related offences. It begins by discussing particular issues that were raised with the Commission in relation to the family violence—related defences, including jury directions and the repeal of defensive homicide.

Many submissions expressed views on the adequacy, consistency and efficacy of current sentencing practice. This section sets out those views and also outlines suggestions for reform that were raised in evidence before the Commission, including suggestions to improve current law and practice in bail matters, different approaches to sentencing and potential changes to offences and sentencing laws.

### Issues with family violence—related defences

The Commission heard some concerns about how the law takes into account the experience of women who commit homicide in response to family violence.

Some of these issues raised are outlined in a 2013 report and subsequent research co-produced by the Domestic Violence Resource Centre Victoria and Monash University.<sup>84</sup> The report (and DVRCV's submission to the Commission, which discusses it) identifies a number of practical issues. While several relate specifically to homicide trials, they are of general relevance.

#### Family violence evidence provisions

DVRCV expressed concern about the under-use of the family violence evidence provisions, in particular those set out in section 322J of the Crimes Act. These provisions are outlined above. DVRCV considers there is a disparity between the use of the provisions and the number of women who claim that they killed their partners in response to family violence.<sup>85</sup> It also queries whether the provisions could be used by prosecutors to provide context where the defendant has a history of perpetrating family violence (rather than just by the defendant where they claim the victim had such a history).<sup>86</sup>

DVRCV suggested that more training is needed to ensure legal professionals make good use of these provisions. They also recommended that section 322J be amended to align more closely with the definition of family violence in the Family Violence Protection Act, including the content from the preamble to that Act relating to the gendered nature of family violence; and that it include a reference to evidence-based risk factors that may indicate an increased risk of the victim being killed or seriously injured.<sup>87</sup>

DVRCV also noted that the Victorian Law Reform Commission, in recommending the family violence provisions, envisaged that a range of experts could be called on to give evidence of family violence—not just psychiatrists and psychologists but 'counsellors, social workers, family violence workers and people who have a specific understanding of particular cultural communities'. However, the DVRCV/Monash University research indicated that this breadth of expertise has not been harnessed: 'there is little indication that a broad range of experts with specific family violence training are being called upon by counsel'. As a result, DVRCV recommended the establishment and funding of an expert panel who can be drawn on by counsel to provide evidence in homicide plea hearings and trials.<sup>88</sup>

## Jury directions on family violence

A similar point is raised in relation to the jury direction provisions on family violence—namely, that they are not fully used, in part because of a lack of understanding on the part of legal professionals of family violence or its potential relevance. DVRCV suggests amending the provisions on jury directions to mandate that the jury direction be given if relevant to the facts in issue, rather than on application by the defence.<sup>89</sup>

## Repeal of defensive homicide

DVRCV also noted that, notwithstanding the grounds for its repeal (described above), the repeal of defensive homicide means that there is now no middle option for victims who kill their partners in circumstances where a context of family violence exists, and may not have a clear claim to self-defence:

We remain concerned that currently, without this partial defence, a woman who kills an abusive partner faces the ‘all or nothing’ choice in risking a murder conviction if she tries to argue ... self-defence. A guilty plea to manslaughter may not be accepted ... where there is evidence of an intention to kill.

...

Until there is a better understanding of the complexities of family violence ... there remains a need for a partial defence that women defendants can raise as an alternative to the full defence of self-defence.<sup>90</sup>

In light of these concerns, DVRCV recommended a Victorian Law Reform Commission review of defences to homicide relevant to family violence victims, including considering reintroducing a partial defence.<sup>91</sup>

## Charging and prosecution practices

A discrete issue described by the DVRCV/Monash University report was ‘overcharging’. This occurs where prosecutors charge a woman with murder, but accept a guilty plea for manslaughter or (prior to its repeal) defensive homicide. DVRCV suggested that:

... when women are facing a murder charge, they are under pressure to plead guilty to lesser offences rather than risking a murder conviction ... This means that in cases where there may be good grounds on which to argue self-defence, [defences] are not being adequately tested at trial.<sup>92</sup>

DVRCV proposed that this issue could be resolved by consultation between police and prosecutors about the appropriate charge. DVRCV noted that the 2010 Australian Law Reform Commission and NSW Law Reform Commission report *Family Violence: A National Legal Response* identified charging practices as an issue warranting review by the states, and suggested that enhancing prosecutorial guidelines in Victoria may help prosecutors determine the appropriate charge.<sup>93</sup>

DVRCV suggested the establishment of a specialist domestic homicide list for courts and a specialist ‘domestic homicide’ unit within the Office of Public Prosecutions. This was based on its view that family violence is a factor in many homicides in Victoria, and that the distinctive features of family violence, including its gendered nature, must be understood by prosecutors and judicial officers.

## Bail

A number of submissions raised issues in relation to the use of bail in family violence-related proceedings. The use of bail in these proceedings involves some unique characteristics. In its 2010 review of Australia’s family violence laws, the ALRC noted that crimes related to family violence are unlike many other crimes:

Where a crime is committed in the context of family violence, the accused will know the victim; he or she might often want to return to the victim; the victim and the accused may have had children together; and/or the victim and the accused might live in the same home.<sup>94</sup>

All of these factors suggest that a person who has committed a crime in the context of family violence might, if granted bail, be more likely to see the victim and so endanger them, than a person accused of a crime against a stranger. The Australian Law Reform Commission therefore considered that when granting bail in matters concerning family violence, 'judicial officers must be alert to the importance of providing for the safety of victims and related children.'<sup>95</sup>

Bail was a prominent focus of the former State Coroner Judge Ian Gray's findings following the inquest into the death of Luke Batty. Judge Gray stressed the value of mutually reinforcing bail conditions and FVIOs, and the importance of prosecutors and judges having a comprehensive grasp of matters relevant to bail, particularly as to whether there is an 'unacceptable risk' in granting bail.<sup>96</sup>

Ultimately, the inquest findings recommended that consideration be given to amending the *Bail Act 1977 (Vic)* to provide that where an accused person is in custody for failing to answer bail, a subsequent application for bail should be refused unless the accused person satisfies the court that the failure to answer bail was due to circumstances beyond their control.<sup>97</sup> This requirement existed in the former section 4(2)(c) of the *Bail Act* as it appeared prior to amendments to the Act in 2004. The provision was repealed following concerns raised by the VLRC that it had a disproportionate and punitive effect on Aboriginal and Torres Strait Islander peoples who had been charged with criminal offences.<sup>98</sup>

Judge Gray also noted a procedural 'loophole'—a bench warrant issued for the arrest of Luke Batty's father had had the effect of nullifying his bail (and any conditions attached). He called for this loophole to be rectified as a matter of urgency.<sup>99</sup>

The Commission heard from other stakeholders about a range of possibilities for improving the use and usefulness of bail in family violence proceedings. These include:

- ▷ widening the presumption against bail
- ▷ improving practices for family violence risk assessments to be provided to magistrates hearing bail applications
- ▷ improving the correlation of bail conditions and FVIOs, including by permitting magistrates hearing bail applications to make FVIOs
- ▷ strengthening practices to ensure that victims of alleged family violence are informed about bail decisions relevant to their safety.

Each of these is discussed in the next section.

### **Widening the presumption against bail**

As noted, the presumption of bail for an individual accused of contravening an FVIO or an FVSN is removed in certain circumstances. A bail applicant who is charged with a family violence contravention and who has a relevant history of violence must 'show cause' as to why bail should be granted.<sup>100</sup> In its submission to the Commission, Victoria Police argued that these provisions should be widened to include all accused who are alleged to have committed any offence within a family violence context.<sup>101</sup>

Expanding these provisions to include all accused who are alleged to have committed any offence within a family violence context (e.g. assault, threats to kill) would require perpetrators to establish why they should be granted bail, rather than placing the onus on police to prove why they should not. This change would recognise the seriousness of family violence offending and make it easier for police and courts to hold perpetrators to account, either by imposing stricter bail conditions or remanding them in custody pending their court hearing if they failed to show cause as to why they should be released.<sup>102</sup>

The Bail Amendment Bill 2015 (Vic) is relevant to this issue. At the time of writing, this Bill is awaiting Royal Assent. The Bill would compel bail applicants in respect of certain charges (including potentially relevant offences such as manslaughter, rape, child sex offences, intentionally causing serious injury, abduction, kidnapping, threats to kill and gross violence offences) to show cause as to why they should be granted bail (contrary to the presumption of bail) if they have been convicted of failing to appear on bail in the preceding five years. The Bill also doubles the maximum penalty for failing to appear on bail from 12 to 24 months.

### **Family violence risk assessment reports**

A number of stakeholders, including the Centre for Innovative Justice, the Men's Referral Service and No To Violence, drew the Commission's attention to favourable aspects of bail programs and practices in other states.<sup>103</sup> For example, in Western Australia, magistrates can request a risk assessment report if they have concerns about the potential dangers posed by a bail applicant.

This process was explained by the Law Reform Commission of Western Australia in a recent report:

These reports are usually prepared by the Family Violence Service of the Department of the Attorney General following a request from the court when a participant in the Family Violence Court program seeks a variation of ... bail conditions ... the reports usually include information in relation to current protective bail conditions; input from the victim; a criminal history and court history check through the court database; history of violence; restraining orders issued against the accused; summary of the statement of material facts in relation to the current offences; information from the Western Australian Police in relation to prior Domestic Violence Incident Reports (DVIRs); information from the Department for Child Protection and Family Support in relation to the parties; risk assessment score and associated comments; information from the Department of Corrective Services; and a recommendation from the Family Violence Service in relation to the proposed variation of protective bail conditions.<sup>104</sup>

The LRCWA noted that due to resourcing constraints, these reports usually take between one and three weeks to prepare, and only a limited number of reports (usually one or two) can be sought each week. However, the LRCWA noted the very positive comments from Western Australian stakeholders about the reports. Magistrates consulted by the LRCWA explained that the information contained in these reports is invaluable and the assessments appear to be widely supported by magistrates and many lawyers. The LRCWA concluded that the approach undertaken in relation to bail risk assessment reports is vital in terms of enhancing decision-making and maximising victim safety.

In cases where an accused seeks a relaxation of protective bail conditions in order to enable contact to occur between the accused and the victim, it is necessary for the court to properly assess the risk to the safety of the victim. In the past, such a decision would ordinarily have been made only after hearing from the accused and the prosecutor. A bail risk assessment report includes relevant information from a range of agencies and also a professional assessment of the risk to the victim.<sup>105</sup> The LRCWA observed that some caution was expressed by defence lawyers about the use of these reports, given that some of the information in the reports may not be appropriate in subsequent proceedings before the same judicial officer, including sentencing proceedings. For example, information from police about 'domestic violence incident reports' may not culminate in charges. However, the LRCWA was of the view that judicial officers were not precluded by the *Bail Act 1982 (WA)* from taking into account the material in the risk assessment reports, and could disregard irrelevant matters in subsequent proceedings.<sup>106</sup>

In considering whether the Western Australian Bail Act should be specifically amended to provide for the ability to request a bail risk assessment report, the LRCWA noted that the Act already provides that a court considering bail may receive and take into account such information as it thinks fit, whether or not that information would normally be admissible in court. It also noted that the Act permitted deferral of a bail determination to obtain more information. Accordingly, the Act as it stood clearly permitted risk assessment reports. Nonetheless, stakeholders suggested to the LRCWA that legislation should recognise the practice of requesting risk assessment reports to encourage their expanded use. The LRCWA recommended that the Act be amended to expressly enable bail to be deferred for the purpose of consideration of what conditions should be imposed to protect a victim of a family violence-related offence.

It is likely that the Victorian Bail Act could, without change, accommodate the practice of seeking and providing risk assessment reports. This is because the bail decision maker<sup>107</sup> may have regard to wide-ranging matters in determining bail applications or variations. In bail applications, the court may have regard to 'all matters appearing to be relevant'.<sup>108</sup> In variation applications, the bail decision maker may have regard to 'all the circumstances'.<sup>109</sup> In both cases, the Bail Act sets out the same (non-exhaustive) examples of matters that may be relevant. These include the nature and seriousness of the offence and the strength of evidence against the accused; the character, criminal history, associations, home environment and background of the accused; and the attitude of the victim to the accused being granted bail.<sup>110</sup> In working this out, the bail decision maker may inform itself by a wide range of means. Section 8 stipulates that the court may make such inquiries of, and concerning, the accused as it considers desirable, and may take into account any evidence which it considers creditable and trustworthy in the circumstances.<sup>111</sup>

The Centre for Innovative Justice reported that the Gold Coast Integrated Response, a multi-agency joint undertaking led by Domestic Violence Prevention Centre Gold Coast Inc, is considering establishing a bail risk assessment report practice.<sup>112</sup>

In the findings following the inquest into the death of Luke Batty, Judge Gray stressed the need to improve processes for providing relevant information to magistrates in family violence matters. In that case, Gregory Anderson, Luke's father, was bailed after a period in remand. On this issue of bail, Judge Gray made the following remarks:

Mr Anderson's bail was not opposed by the police prosecutor on 11 June 2013 and the Magistrate was not told any details of his bail history or the nature of his charges. It appears this resulted from a combination of factors, which included the unavailability of the primary informants, a lack of knowledge on the part of the prosecutors of the significant evidence previously given by Ms Batty, and the pressures of a busy list.

...

While this bail hearing ... cannot be seen as connected to Luke's death, it did provide an example of the system failing to respond to Mr Anderson in a way that might have brought home to him the seriousness of the charges he was facing. It also meant that there was a lost opportunity to, as part of the bail process ... consider the imposition of conditions that might have encouraged, or compelled better behaviour from Mr Anderson and which may have allowed him to be assessed by a psychiatric nurse. Bail hearings are important aspects of the criminal justice system. Prosecutorial rigour is necessary and is expected by the courts ... In the setting of family violence the protective aspect of bail, and the potential of bail to control behaviour through the use of conditions can promote public safety.<sup>113</sup>

Given the above, Judge Gray considered that police prosecutors should have access to all of the matters—both civil and criminal—related to the application, and the relevant L17s, and that there should be clear policy on supplying relevant information to the magistrate.

### **Bail conditions and family violence intervention order conditions**

The Commission heard about the need to avoid inconsistency between bail conditions and the conditions attached to FVIOs. The 2010 ALRC report on family violence laws stressed the need for consistency between these orders. The ALRC stated that:

Where they are inconsistent and victims and accused persons do not understand how they work and interact, then conditions can be inadvertently breached and ambiguities can be deliberately exploited. This can compromise the safety of victims. This may also have serious consequences for accused persons—breaching a protection order is a criminal offence; breaching a bail condition might bring the accused back before court, where the accused may be refused bail and incarcerated.<sup>114</sup>

This concern was also identified in Judge Gray's findings following the inquest into the death of Luke Batty. Judge Gray stressed the value of bail in holding perpetrators to account and strengthening victim safety in family violence matters. He referred to the evidence of First Constable Paul Topham of Victoria Police, and suggested that in certain cases, bail conditions usefully augment the capacity of FVIOs to keep the perpetrator in view of the justice system:

FC Topham reasoned that strict bail conditions could provide Ms [Rosie] Batty and Luke greater safety pending the variation of the FVIO. FC Topham also reasoned that a breach of bail conditions gave a police officer the power to bring Mr Anderson back before a magistrate, whereas a breach of FVIO triggered an interview with police and a possible summary offence charge. FC Topham's evidence was that if Mr Anderson breached bail and was brought before a magistrate on every occasion, this was a better tool than the accumulation of summary charges for breach of the FVIO ...

I fully agree with his proposition. Holding family violence offenders to account in court after breaches of bail is a far better way to promote the safety of the victim than is serving summons for breaches over time.<sup>115</sup>

Judge Gray's findings stress the importance of FVIO conditions which mirror (in strength and scope) bail conditions, so that there is ongoing protection if bail conditions expire or vary, or circumstances otherwise change (for example, if criminal proceedings resolve in an acquittal, but the victim—particularly if they have given evidence—feels they require continuing protection).<sup>116</sup>

To that end, Judge Gray suggested that bail and FVIO conditions should be mutually reinforcing, such that 'intervention order conditions are aligned with bail conditions to the greatest possible extent'. When either bail or FVIO conditions are varied, it is suggested that prosecutors apply for mutually consistent variations 'to ensure an outcome of parallel bail order and intervention order conditions'.<sup>117</sup>

Deputy Chief Magistrate Broughton, in evidence before the Commission, reiterated that bail and FVIO conditions should be mutually reinforcing. She also raised the concern that conditions are not always consistent. Deputy Chief Magistrate Broughton noted that bail and FVIO proceedings arising from the same course of events may be heard in different court venues. This, coupled with delays in bringing criminal proceedings and shortcomings in the court database which make it difficult to determine the existence and status of parallel proceedings, may mean that either set of proceedings may be determined in isolation, or on the basis of incomplete information.<sup>118</sup>

Matters heard summarily are usually prosecuted by Victoria Police, while more serious offences may be committed for trial in the higher courts, and are prosecuted by the Office of Public Prosecutions. Deputy Chief Magistrate Broughton points out that because it is concerned with criminal proceedings, the OPP has limited capacity or expertise in managing the relationship between these and civil proceedings—leading to further risk of inconsistency between bail and FVIO conditions.<sup>119</sup>

The 2010 ALRC report considered several means to address inconsistent conditions. The report argues that specialist courts, which consider related civil and criminal proceedings concurrently, are well placed to ensure consistency. It further suggests that state and territory legislation require judicial officers to consider, when determining bail applications in circumstances of family violence, whether their purposes are best served by imposing bail conditions to protect the alleged victim; by an FVIO; or both.<sup>120</sup> More widely, it recommended that state and territory family violence legislation should include an express provision conferring on courts a power to make an intervention order on their own initiative at any stage of a criminal proceeding (subject to the proviso that any such order made prior to a plea of guilt should be interim until there is a plea of guilt).

The Commission sought comment from the Victorian Department of Justice and Regulation as to which of the ALRC's recommendations had since been implemented (or were otherwise reflected in Victorian law). The Department confirmed that these recommendations had not been implemented. In the case of the bail recommendation, they stated it was not consistent with government policy at the time.<sup>121</sup> However, the Department referred the Commission to the Office of Public Prosecutions' policy on family violence prosecutions, which provides that:<sup>122</sup>

When preparing a bail application, solicitors should discuss with the police informant whether—if the application for bail is successful—an application for an intervention order should be sought by police on behalf of the victim, or by the victim themselves. Intervention orders can provide additional protection for victims from the accused or others connected with the accused.

...

The prosecutor should also inform the court during the sentencing process if an accused has a history of breaching intervention orders relating to the particular victim.

At the conclusion of a prosecution, the OPP solicitor should discuss with the police informant whether an application for an intervention order should be made, or an extension sought to an existing order. Once the protections provided by bail are removed, an intervention order may be needed to ensure the safety of the victim.<sup>123</sup>

The policy goes on to note that in these cases, prosecutors should encourage police to make that application; and that it may be appropriate to consider applying for an intervention order even in matters where the accused is sentenced to serve an immediate term of imprisonment, to prevent the accused from perpetrating violence while in prison or after their release. The Commission notes that bail proceedings are commonly managed by police, and the Victoria Police Code of Practice for the Investigation of Family Violence recognises that bail conditions should seek to protect affected family members.

### **Keeping victims informed about bail proceedings**

The Family Violence Protection Act provides that where a respondent to an application for a family violence order is arrested under warrant, the affected family member must be notified of the outcome of the application for bail and if bail is granted, advised of any conditions imposed on the respondent that are intended to protect the affected family member (and given a copy of the bail undertaking).<sup>124</sup> Similarly, the *Victims Charter Act 2006* (Vic) provides that on request by a victim, a prosecuting agency must inform the victim of the outcome of any bail application; and if bail is granted, of any conditions intended to protect the victim.<sup>125</sup> Some concerns have been raised that prosecutors and police do not always inform victims when bail decisions affecting their safety are made. Matters of Victoria Police compliance with their professional Code of Practice and statutory obligations are considered in Chapter 14.

### **Bailing to specific address and/or service**

In Tasmania, individuals charged with a family violence offence can be bailed to the Defendant Health Liaison Service.<sup>126</sup> A condition of bail is that the defendant make and attend an appointment with the service, and thereafter the DHLS acts as a case coordinator, assessing the defendant's needs and referring them to appropriate services.<sup>127</sup> Some of these functions in Victoria are performed by the Courts Integrated Services Program (CISP).

The Magistrates' Court of Victoria and Children's Court of Victoria submission to the Commission suggested that the Family Violence Protection Act be amended to specifically allow for respondents to be bailed to a relevant court support service such as CISP.<sup>128</sup>

More generally, the Centre for Innovative Justice, echoing a point the former State Coroner Judge Gray heard in the inquest into the death of Luke Batty, noted that 'it is common for people to be bailed to a non-specific address, such as a geographical area'.<sup>129</sup>

## Exclusion of evidence at trial

DVRCV expressed concerns about the exclusion or under-use of evidence of some features of the relationship history between the defendant and the victim, where that history involved family violence. In some cases, a court may decide to exclude such evidence—that is, evidence about conduct or events other than those to which the criminal charges relate—because of the risk that the jury’s decision will be unduly influenced by that history. Similar evidence is also excluded in other criminal trials: for example, if someone is on trial for assault, evidence about their criminal history may not go before the jury, to avoid the risk that a juror might reason that the defendant is ‘the kind of person’ who would commit the charged offence, rather than deciding whether they are guilty or not guilty of that charge based on the evidence. In a family violence matter, there could be cases where past violence of a different kind, or violence against other family members or non-family members, is excluded.

The exclusion of evidence at trial may be particularly difficult for victims, and families and friends of victims. Issues relating to the exclusion of evidence involve broader questions about the way in which trials are conducted and have implications beyond family violence cases. These issues are complex and the Commission decided it went beyond the scope of this review.<sup>130</sup>

The tension between the strictures of the justice system and the desire for the parties to convey their experience and be heard is considered in Chapters 16 and 18.

## Views on current sentencing practices

### Adequacy and consistency of current sentencing practices

Many submissions received by the Commission commented on sentencing practices. A range of submissions considered that sentences for family violence offences were inadequate or inconsistent. Some suggested that sentences failed to reflect the seriousness of offending; some that they failed to deter specific offenders, or family violence generally, or keep the community safe; and others that they were inconsistent with each other, or with sentences for the same offences committed in a non-family violence context. In particular, some women noted that they remained vulnerable to violence despite the imposition of sentences:

Survivors like me and my children have been deprived of our basic human rights as a direct result of a recidivist abuser not being adequately or appropriately controlled through the justice system. Orthodox criminal sanctions such as gaol, fines and/or parole etc. have of course their place but they do not necessarily guarantee changed behaviours concerning family violence recidivism. And they are no use to my children and me if we are injured or killed. Even after intervention by the justice system, there is no justice for us, if there is nothing effective in place to stop or inhibit my estranged partner from re-offending ... [M]y estranged partner continued to stalk and terrify us despite ... [having served a] gaol sentence and being on probation at the time of re-offending ...<sup>131</sup>

...

There should be longer sentences for perpetrators. I was abused by my stepfather in every way imaginable. It didn’t stop until I got a boyfriend. He [stepfather] got two and a half years in jail. I had an argument with my boyfriend. He couldn’t figure out what was wrong with me. My step-dad grabbed me and put me in the car and belted my head into the window as we drove along. He would interfere with my life. Every chance he got he would rape me. And he only got two and a half years. He said it was a taught behaviour ... Sentences should be longer. He should be on a register like paedophiles. People reckon he has changed, but every time I go round there he’s always drinking, talking about doing this, this, and this. It took me 20 years to be diagnosed with depression. My step-mum noticed him looking at my girls the same way he looked at me. There’s no way he’s changed.<sup>132</sup>

In view of the above, several submissions favoured greater reliance on prison sentences instead of non-custodial options, and a general move towards harsher, 'zero tolerance' approaches. One Victorian Member of Parliament noted:

The community believes that FV perpetrators are often treated very leniently. Often they tell me that it feels like those breaking [FVIOs] are simply given a 'slap on the wrist'. Further, instead of offenders being imprisoned they receive a community service order; which often leads to offenders re-offending. Lawyers often suggest their client attend behavioural change courses, which are not mandatory and have a low success rate. A firm message and action to the community needs to be sent out that violent behaviour will attract prison time.<sup>133</sup>

In its submission, the Police Association Victoria expressed frustration with the frequent use of lower-end sentencing options:

With respect to sentencing offenders on family violence related charges, many members suggested that Magistrates were all too often lenient. This is particularly the case with leniency shown to breaches of intervention orders. The over-reliance on fines and relatively brief custodial sentences imposed by Magistrates is a source of great frustration ... recent reforms encouraging members to apply for orders on a victim's behalf and adherence to pro-arrest approach[es] can only be as strong as the response these actions meet in the courts. It is the experience and perception of members that the courts do not currently reflect the seriousness with which family violence is treated by police.<sup>134</sup>

The use of fines for aggravated contravention offences was described by Sentencing Advisory Council stakeholders as 'striking' and 'concerning'. The Sentencing Advisory Council reiterated its earlier caution in its 2009 report against the use of fines in the context of FVIO and FVSN contraventions, concluding that fines for FVIO contravention were generally unable to fulfil the purposes of community protection and rehabilitation. It further observed that fines may compound the harm experienced by the victim. Where the offender and victim are in a relationship of financial interdependence, a fine is likely to punish the victim as well as the offender by withdrawing resources from the family as a whole.<sup>135</sup>

The Sentencing Advisory Council report went on to hypothesise that one explanation for the prevalence of fines, at least for non-aggravated contraventions, is that breaches have been treated more seriously by police: there has been a decline in the notion of a 'technical breach', and possibly a corresponding increase in the number of 'relatively less serious contravention offences coming before the courts'.<sup>136</sup>

As part of its work, the Sentencing Advisory Council has produced *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009). The principles are a response to concerns from stakeholders that sentences rarely reflected the seriousness of the offence. In relation to fines, the guidelines suggest:

The court should consider whether a fine will negatively impact on the victim, for example if imposing a fine may affect the offender's ability to pay child support payments or provide other financial support that the offender would normally provide to the household.<sup>137</sup>

Some submissions did not consider longer custodial sentences a desirable or effective means of ensuring safety, accountability or behavioural change, or felt there was insufficient evidence about the consistency between sentencing practices in family violence and non-family violence criminal matters. For example, in its submission, Loddon Campaspe Community Legal Centre referred to its survey of 190 women seeking intervention orders against their violent partners at Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts. Twenty-seven of these women participated in in-depth interviews with LCCCLC. This passage summarises a common view among interviewees of perpetrator accountability:<sup>138</sup>

A small number of women would have advocated punishment by imprisonment for their respective offenders. They felt that it was the only way of bringing safety to their lives because their offenders were not capable of rehabilitation.

Many women, however, did not wish offenders to be punished by imprisonment. They wanted a broad integrated response to family violence that sees a shifting of focus from women to offenders. They recommended that this response include early offender intervention, the offenders to hear and understand the impacts their violence has had on the women and their children and acknowledge the harm they have caused. It also includes facilitating offender engagement with relevant men's behaviour change programs and long-term monitoring and mentoring that addresses individual offender needs not to reoffend.

The women's greatest priority was feeling heard, and wanting the behaviour to stop.

Similarly, Jesuit Social Services proposed that prison should only be used as a last resort to respond to serious recidivist behaviour as it is unlikely to have any impact on reducing violent offending, and in fact can often make matters worse. JSS also told the Commission that research shows that prison cultures only reinforce male aggression and gendered attitudes and do little to reduce the continuing risk that men who use violence present to their families or the community.<sup>139</sup> JSS further commented that numerous studies also indicate that imprisonment can increase the risk of further violence once they are released.

The submission from No To Violence and Men's Referral Service noted the limits and potential risks of punitive, incarceration-based strategies. The Commission heard that incarceration for short or long-term periods is the only option, in some situations, to provide safety for a man's family due to the substantial risk posed by a particular perpetrator. However, the submission indicated that there is no evidence that incarcerating offenders for lengthy periods of time works in itself to produce behaviour change or to lower risk after the perpetrator's release back into the community. No To Violence and Men's Referral Service further told the Commission that 'tough on crime' and other punitive policies carry a range of other disadvantages:

They sweep marginalised communities due to Indigeneity, ethnicity, poverty, cognitive impairment or other factors into highly disproportionate incarceration rates compared to more privileged groups, accentuating cycles of entrenched disadvantage correlated with family violence and other interpersonal crime. Incarceration is incredibly expensive—the costs of running a men's behaviour change program for 100 men in an urban setting for a year is less than the annual cost of incarcerating three offenders.<sup>140</sup>

Victoria Legal Aid likewise cautioned against a 'tougher' approach to family violence offending which limits judicial discretion, suggesting this may deepen inconsistencies with sentencing of non-family violence offenders. VLA noted that there will of course be cases where a prison sentence will be a necessary and proportionate response. In others, VLA considered that referral to a support service may be a more suitable and effective response, perhaps under a community correction order.<sup>141</sup>

VLA's submission goes on to note that a lack of data makes it difficult to fully resolve disputes about whether current sentencing practices for family violence offences are adequate, or consistent with comparable non-family violence offences.<sup>142</sup>

### **The efficacy of different approaches to sentencing**

The Commission was presented with recent research on imprisonment, particularly in Victoria, to assist its understanding of the utility and desirability of more and longer custodial sentences.

For example, in 2011, the Sentencing Advisory Council produced a report on the value of imprisonment as a means of achieving specific and general deterrence. The following year, it reported on the value of imprisonment as a means of achieving community protection.

The 2011 report, which surveyed a range of studies, concluded that while imprisonment does have a small effect on general deterrence, increases in the severity of penalties, such as increasing the length of imprisonment, do not produce a corresponding increase in the general deterrent effect.<sup>143</sup>

In terms of specifically deterring an offender, the report indicated that imprisonment has, at best, no effect on the rate of re-offending and is often criminogenic, resulting in a greater rate of recidivism by imprisoned offenders compared with offenders who received a different sentence.<sup>144</sup>

The report suggests that this may be explained by prison being a 'learning environment' for crime, and an environment where criminal identity is reinforced, social ties that encourage lawful behaviour are diminished or severed, and the specific needs of some offenders (including treatment for substance abuse and mental health issues) are not reliably met. The report also found that harsher conditions inside prison do not enhance the deterrent effect.

Conversely, the report notes that a consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect.<sup>145</sup>

The 2012 Sentencing Advisory Council report on the value of imprisonment and community protection indicated that while prison obviously inhibits an offender's capacity to continue to offend while in prison, the long-term effects of imprisonment are less clear. In particular, the benefits of more indiscriminate approaches to imprisonment (such as might result from mandatory minimum sentencing) may be outweighed by the costs, and by the criminogenic impacts of prison. The report noted that while more selective approaches—which identify frequent offenders at risk of re-offending—show more promise in terms of crime reduction, identifying this cohort is difficult.<sup>146</sup>

These studies were not specific to family violence offenders. In terms of findings specific to family violence, a recent comprehensive study of sentencing of family violence offenders conducted by the Tasmanian Sentencing Advisory Council observed that 'the data does not provide a basis for claiming that harsher penalties would reduce recidivism rates', and concluded that the imposition of sanctions alone is not bringing about a change in offender behaviour. This suggests that a greater investment in rehabilitative interventions and the adoption of a more therapeutic approach to sentencing should be considered.<sup>147</sup>

The Commission was also informed about the disproportionate impact of imprisonment on particular population groups and communities. For example, some submissions referred to the over-representation of Aboriginal and Torres Strait Islander peoples in the prison system.<sup>148</sup> A study conducted by Corrections Victoria in 2011 found that a disproportionately large number of prisoners in Victoria—42 per cent of men and 33 per cent of women—suffered from an acquired brain injury.<sup>149</sup> Most recently, in a 2015 report, Jesuit Social Services noted that the Victorian prison population is disproportionately composed of people from a small subset of disadvantaged postcodes.<sup>150</sup>

### **The use of provocation in sentencing**

A further issue that was raised in relation to current sentencing practice relates to judges accepting arguments about the provocation of the defendant, where the defendant is a man who killed his partner, as a mitigating factor in sentencing.<sup>151</sup>

Provocation, which provided a partial defence to murder in circumstances where the victim was said to have provoked the offender, was abolished in Victoria in 2005.<sup>152</sup> At the time, then Attorney-General the Hon. Rob Hulls stated that provocation law 'was developed from times past when it was acceptable, especially for men, to have a violent response to an alleged breach of a person's honour' and that the defence 'promotes a culture of blaming the victim and has no place in a modern society'.<sup>153</sup>

However, the defendant's state of mind in this regard may still be relevant in fixing their sentence following a conviction for murder. The DVRCV/Monash University research indicates that there are a number of cases where such arguments—which may be linked, for example, to depressive disorders or other states of mind brought on by separation or the end of a relationship—are accepted. They support the Sentencing Advisory Council's suggestion in a 2009 report that principles should be developed around provocation as a mitigating factor in sentencing.

## Potential changes to offences and sentencing laws

Some submissions acknowledged problems with the consistency of charging, prosecution and sentencing practices and suggested that they might be improved by changes to offences and sentencing laws. Suggested options for reform include the creation of new criminal offences, stipulating higher maximum penalties for existing offences (aggravated offences), designating existing offences as family violence offences and amending the new contravention offences (sections 37A, 123A and 125A of the Family Violence Protection Act). The Commission also heard about the option of mandating family violence as a consideration in sentencing and mandatory sentencing generally. Finally, the option of amending the existing bail provisions was also raised for the Commission's consideration. Each of these issues is discussed below.

### New offences

Some submissions proposed a new criminal offence (or multiple new offences) for family violence. The form of any new offence could vary, from wide offences of committing a range of forms of family violence (which may overlap with existing criminal offences), to an offence which criminalises a specific form or forms of family violence not currently covered by the criminal law.

There are examples of such offences interstate and overseas. For instance, in Tasmania, sections 8 and 9 of the *Family Violence Act 2004* (Tas) criminalise economic and emotional abuse. Both offences are punishable by fine or up to two years' imprisonment. In Victoria, emotional and economic abuse are included in the definition of family violence in section 5 of the Family Violence Protection Act but neither corresponds directly with a criminal offence.

When these offences were introduced the Tasmanian Attorney-General stressed that:

... family violence does not always take on an overtly physical form and ... it can involve a range of behaviours aimed at isolating the victim and undermining their capacity to take action.<sup>154</sup>

The creation of these offences was intended to reflect 'a more holistic view of the nature of family violence' and to 'offer [the Tasmanian] community the best possible protection against its many forms'.<sup>155</sup>

In the United Kingdom, the *Serious Crime Act 2015* (UK) creates the offence of 'coercive or controlling behaviour in an intimate or familial relationship'.<sup>156</sup> The offence is constituted by the perpetrator 'repeatedly or continuously' engaging in behaviour which has a 'serious effect' on the victim, meaning that it caused the victim to fear violence will be used against them 'on at least two occasions', or caused serious alarm or distress which had 'a substantial adverse effect on the victim's day to day activities'. The victim and the perpetrator must (at the time of the offending) be in an intimate personal relationship, or be living together and family members, or living together and previously in an intimate personal relationship. The circumstances must be such that the perpetrator knew or ought to have known of the 'serious effect'.

The UK Home Office explained in a Statutory Guidance Framework for police and criminal justice agencies that the offence closes a gap in the law around patterns of controlling or coercive behaviour that occurs during a relationship. According to the UK Home Office, the offence 'sends a clear message that this form of domestic abuse can constitute a serious offence ... and will provide better protection to victims experiencing repeated or continuous abuse'.<sup>157</sup>

Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division, Department of Justice and Regulation, raised the possibility of a broad, stand-alone offence of 'causing injury through family violence', based on existing offences of intentionally or recklessly causing injury, without necessarily endorsing this approach. She emphasised the potential educative or awareness-raising benefits of such an offence, explaining that while the offence would not criminalise anything new, it might encourage police, prosecutors and judicial officers to treat conduct causing mental harm in the same way as conduct causing a physical injury is treated.<sup>158</sup>

The Commission heard differing views on the viability of a new offence. Professor Heather Douglas from the University of Queensland expressed 'significant concerns' about introducing a UK-type offence in Australia, due in part to the likely uncertainty about what constitutes coercive and controlling behaviour, the possibility of capturing conduct that does not occur in an intimate relationship, and the possibility that forms of family violence which cannot be characterised as coercive and controlling behaviour may be treated less seriously.<sup>159</sup> However, Professor Douglas did propose an offence of cruelty, being the infliction of pain or suffering (physical or psychological, and temporary or permanent) by an act or series of acts, with a higher maximum penalty if the cruelty occurs in the context of a domestic relationship.<sup>160</sup>

Professor Douglas also suggested that consideration be given to introducing a specific offence of strangulation. This was based on her research indicating that strangulation in intimate partnerships was often a precursor to 'serious abuse and death' but, in Queensland at least, was not treated differently or more seriously by police and courts than other less serious allegations such as assault.<sup>161</sup>

Family violence may—more often than some other forms of violence—be constituted by a complex pattern of behaviour, rather than a particular episode. 'Course of conduct'-type offences (like Professor Douglas' proposed cruelty offence, and the new UK offence) seek to encompass this pattern of behaviour, rather than isolating particular acts or episodes. Offences of this kind exist elsewhere in the criminal law; for example, section 47A of the Crimes Act criminalises persistent sexual abuse of a child, including where the distinct acts constituting the pattern of abuse are different in nature and criminalised by different provisions. This provision reflects the fact that the persistence of the offending is relevant to the nature of the offending, and the offender's culpability.

Professor Freiberg was circumspect about the introduction of a new offence. He expressed concern that the offences proposed by Professor Douglas may be 'very difficult to prove'. More generally, Professor Freiberg noted that the Sentencing Advisory Council's research indicated that since the introduction of the Tasmanian offence of economic and emotional abuse in 2004, there had been 'no prosecutions or convictions for economic abuse and ... eight prosecutions for emotional abuse'.<sup>162</sup>

The Australian Law Reform Commission noted in its 2010 Consultation Paper, *Family Violence—Improving Legal Frameworks*, that policing an offence such as economic or emotional abuse is 'fraught with difficulties' and 'each element of such offences has to be proved beyond reasonable doubt and there may be significant evidentiary challenges to meet this standard'.<sup>163</sup> In its final report, ALRC also questioned whether an economic abuse offence was necessary given the scope of existing laws, for example, those relating to fraud, undue influence and causing financial disadvantage.<sup>164</sup> The same may be true of at least some forms of emotional abuse, given that the Crimes Act defines 'injury' to include temporary or permanent harm to mental health (although this does not include 'an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm').<sup>165</sup> Therefore, offences of 'causing injury' may cover conduct causing harm to mental health.

Ms Helen Fatouros, Director of Criminal Law Services at Victoria Legal Aid, was similarly cautious about new offences. She noted that 'we have such a broad suite of criminal offences', both at state and Commonwealth level, covering 'everything from verbal and electronic threats all the way through to murder'; and to introduce new offences without a 'proper evidence base ... and very careful policy process' would risk fragmenting and limiting the criminal law's capacity to hold perpetrators to account. Ms Fatouros cited defensive homicide—the history of which is outlined above—as an example of a well-intentioned offence which had some concerning implications.<sup>166</sup>

The Special Taskforce on Domestic and Family Violence in Queensland considered a new general family violence offence in its report *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*. In declining to recommend a new offence, the taskforce noted that the difficulties with prosecuting domestic and family violence offences relate more to problems with evidence gathering, witness cooperation, police practice and court process. The taskforce further noted that it is these elements which have undermined the effective use of the existing Criminal Code provisions and that simply creating a dedicated offence of domestic and family violence would not alleviate these barriers.<sup>167</sup> However, the taskforce did recommend an offence of strangulation.

This follows similar conclusions of the ALRC in their 2010 review of family violence laws. Submissions to the ALRC suggested that the suite of offences at that time failed to ‘recognise the pattern-based nature of family violence and its full impact on victims’; submissions also highlighted the potential educative function of a family violence offence which emphasised the seriousness and diversity of this kind of offending—educating not just the community but lawmakers, police and members of the judiciary.<sup>168</sup> However, the ALRC was persuaded that there were considerable difficulties with the introduction of a distinct, overarching family violence offence, not least the practical and legal difficulties involved in particularising the conduct which such an offence might cover.

In its 2010 report, the ALRC noted that many difficulties reported by stakeholders, which had led to support for a new offence, could be addressed within existing legal frameworks. It explained that while new offences may be one means of achieving this outcome, new offences are justified only where it can be established that the behaviour sought to be addressed cannot be adequately dealt with under the existing legislative framework.<sup>169</sup>

The ALRC noted that while an umbrella offence of causing family violence might help facilitate understanding of the dynamics of family violence, there is insufficient evidence to conclude that improvements cannot be realised within existing frameworks, or that an umbrella offence would necessarily achieve the desired outcomes. The ALRC considered that a preferable approach would be for state and territory governments to examine the operation of, and consider making improvements to, existing responses before contemplating an umbrella offence.<sup>170</sup>

### **Aggravated offences**

An alternative to creating new offences is stipulating a higher maximum penalty for existing offences when they are committed in the context of family violence.

There are examples of this approach in existing Victorian law. For example, the Crimes Act includes higher maximum sentences for the offence of ‘sexual penetration of a child under 16’ where that child is under 12, or is between 12 and 16 years but under the care, supervision or authority of the offender. The Act also includes ‘aggravated burglary’, which is a burglary committed where the offender is carrying a weapon, firearm or explosive (or imitation firearm or explosive) or where a person is present at the time of the burglary, and the offender knew of or was reckless as to their presence.<sup>171</sup> Section 24 of the *Summary Offences Act 1966* (Vic) creates the offence of aggravated assault, where an assault is committed against a woman, or a male child under 14. The Victims of Crime Commissioner suggested that family violence be added as an aggravating circumstance for the purposes of this provision.<sup>172</sup>

There are aggravated offences relevant to family violence in South Australia and Western Australia. The Western Australian *Criminal Code Act Compilation Act 1913* (WA) includes higher penalties for a range of physical, sexual, property and dishonesty offences committed in ‘circumstances of aggravation’, which include where the offender is in a family or domestic relationship with the victim; a child was present when the offence was committed; the conduct constituted a breach of an order under the *Restraining Orders Act 1997*; or the victim is over 60 years. Similarly, South Australia’s *Criminal Law Consolidation Act 1935* (SA) defines an aggravated offence as an offence committed in certain circumstances, which include where the victim was a spouse, former spouse, domestic partner or former domestic partner of the offender; or a child of, or who resides with, the offender or their spouse, former spouse, partner or domestic partner.<sup>173</sup>

The ALRC notes that a defined family relationship between victim and offender should not be the sole basis for aggravating an offence. According to the ALRC, this elevates, by definition, the status of an offence committed against family members over those committed against strangers, without principled justification. The ALRC considers that it further creates the unacceptable risk that persons may be charged with aggravated offences in circumstances where it may not always be just and appropriate to do so: for example, where an alleged offender has a mental illness, is a child with substance abuse issues, or is a victim of family violence who uses defensive force. While prosecutorial discretion may reduce the likelihood of prosecutions for aggravated offences in such circumstances, the ALRC considered that it is undesirable to leave open this possibility, given the gravity of potential consequences of the accused:

... the concept of family violence itself necessitates some form of proof of the underlying dynamics of power and control in the relationship. The mere existence of a family relationship between parties is inconclusive of this matter.<sup>174</sup>

On this basis, the ALRC—while acknowledging the educative and denunciatory functions of aggravated offences for family violence—was opposed to them. The Special Taskforce on Domestic and Family Violence in Queensland recommended that family violence be added as a circumstance of aggravation for all criminal offences, but did not prescribe a specific formulation for aggravating circumstances.<sup>175</sup>

### **Designated offences**

The Commission also heard about the option of designating or ‘flagging’ existing offences as family violence offences. This option is distinct from creating new or aggravated offences. It does not alter the substance of the offence or the sentencing options open to the court.

This approach has been adopted in other jurisdictions. For example, Tasmania’s Family Violence Act defines family violence, and stipulates that a ‘family violence offence’ is any offence the commission of which constitutes family violence. This includes existing offences such as assault, sexual assault, threats, abduction and stalking.<sup>176</sup>

Similarly, New South Wales’ *Crimes (Domestic and Personal Violence) Act 2007* defines a domestic violence offence as a ‘personal violence offence’ (which is defined by reference to existing offences in the *Crimes Act 1900* (NSW)) committed against a person with whom the offender has, or has had, a domestic relationship (which may include their husband or wife, de facto partner, intimate partner, co-resident, relative or kin). The Act also provides for recording and classification practices to reflect this definition.<sup>177</sup>

The ACT’s *Domestic Violence and Protection Orders Act 2008* (ACT) also defines ‘domestic violence offence’ by reference to existing offences in the *Crimes Act 1900* (ACT) and offences in other acts.<sup>178</sup>

These provisions have the effect of ‘flagging’ these offences in the systems used across the legal and law enforcement systems—police, courts, corrections, and the Department of Justice.

Professor Freiberg told the Commission that this has allowed the Sentencing Advisory Council to conduct an analysis of the difference between Tasmanian sentencing practices for the offence of assaults in a family violence context and in a non-family violence context.

As noted, the Tasmanian study did not support the view that sentencing for family violence–related offences was more lenient, while two different NSW studies (albeit of different aspects of family violence offending) came to different conclusions about sentencing practices in that state. It is notable that the authors of the 2015 NSW Bureau of Crime Statistics and Research report state that:

There has been a lack of research on sentencing practices for domestic violence matters in Australia. This stems largely from the fact that, historically, researchers have been unable to reliably distinguish between domestic violence and non-domestic violence offences of the same type using court administrative data. However, since March 2008, NSW Courts have been directed to record an offence as domestic violence if it [sic] is satisfied that the offence occurred within a domestic relationship (see section 12 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)). This has resulted in a large number of personal offences (e.g. assault, sexual assault) now being identified as domestic violence related offences. This legislation has also served to broaden the definition of domestic violence to include stalking and intimidation offences ... and also other acts which traditionally have not been classified as violent such as malicious damage to property, trespass and offensive behaviour offences.<sup>179</sup>

The authors note that their research project ‘capitalised’ on these legislative changes.

As noted above, Professor Freiberg described these kinds of comparisons between family violence and non-family violence sentencing practices as ‘impossible’ in Victoria, given the need to manually extract relevant case information to identify a relationship with family violence.

### **Persistent contravention offence**

It is an offence in Victoria to persistently contravene a family violence intervention order or a safety notice. ‘Persistent contravention’ requires that three contraventions of the order occur within 28 days.<sup>180</sup> The Explanatory Memorandum for this provision explains that ‘the gravamen of this offence is the persistent nature of the contraventions over a short period of time that demonstrates a disregard for the law.’<sup>181</sup>

The Commission heard from Ms De Cicco that 28 days was selected as an appropriate time period, and that this was determined through discussion with police. Ms De Cicco stated that what was sought to be captured were persistent breaches that seemed to be emerging almost immediately after the intervention orders were made.<sup>182</sup>

Two distinct issues arise in relation to the persistent contravention offence. The first issue relates to the time period in which contraventions of family violence orders tends to take place.

Research by the Crimes Statistics Agency on recidivist perpetrators of family violence undertaken for this Commission found that for perpetrators who had more than one family violence incident, the median number of days between the initial incident and the second incident was 275; for those who had a third incident, the median number of days between the second and third incidents was 156; and for those who had a fourth incident, the median number of days between the third and fourth incident was 109.<sup>183</sup>

The CSA research suggests that there will be a cohort of offenders who repeatedly contravene an FVIO, but whose contraventions do not occur within the 28-day period specified by the persistent breach offence.

The second issue in relation to the persistent contravention offence was brought to the Commission’s attention by Deputy Chief Magistrate Felicity Broughton. Under section 113 of the Sentencing Act, the maximum term of imprisonment which can be imposed for a single indictable offence tried summarily is two years. In respect of several offences committed at the same time, the maximum cumulative term is five years (section 113B).

Deputy Chief Magistrate Broughton noted that this could have the unusual consequence that while the Magistrates' Court could impose a sentence of five years for three individual contravention charges, it can only impose a sentence of two years for a single charge of persistent contravention (even though the conduct involved may be identical). She described this as an 'anomaly'.<sup>184</sup> The vast majority of contravention charges (approximately 96 per cent) are sentenced in the Magistrates' Court.<sup>185</sup> At the same time, as noted above, a number of factors (including the seriousness of the offence) are relevant in deciding whether to try an indictable offence summarily, or in the higher courts. A single charge (albeit encompassing three contraventions) may be serious enough to warrant a sentence greater than two years, and therefore be appropriate for determination in the higher courts.

### **Mandatory consideration in sentencing**

The Commission also heard about the option of amending sentencing provisions to stipulate that a context of family violence is a mandatory consideration in sentencing.

As discussed above, the Sentencing Act sets out a range of considerations to which the court must have regard in sentencing an offender. These mandatory considerations include the presence of aggravating factors: that is, factors which are said to bring the offence into a higher category of seriousness and warrant the imposition of a higher sentence. The court must be satisfied beyond reasonable doubt of the facts going to an aggravating factor.<sup>186</sup>

However, the Sentencing Act does not specify aggravating factors. Indeed, there is no complete list of factors (in statute or common law) which count as aggravating factors. A non-exhaustive range of factors is well established at common law and includes the victim's age or vulnerability; the prevalence of an offence; repeat offending; the fact that the offence involved a breach of trust; and the fact that the offence constituted a breach of a court order (including an intervention order).<sup>187</sup> In some jurisdictions, specific aggravating factors are enshrined in legislation. For example, section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) provides a list of aggravating circumstances which includes offences committed in the presence of children or the victim's home, or offences constituting an abuse of trust or authority in relation to the victim. This list operates in addition to established common law principles.<sup>188</sup>

An alternative to specifying aggravating factors would be to make a context of family violence (or specific aspects of family violence) a mandatory consideration in its own right in sentencing. Ms De Cicco notes in her statement to the Commission that this approach was taken in 2009 when section 5(2)(daaa) was inserted into the Sentencing Act. That provision specifies that the court must take into account whether the offence was motivated by hatred or prejudice against a group of people with common characteristics with which the victim was associated. Where an offence is motivated by hate or prejudice against a particular group, this motivation is taken into account as an aggravating circumstance at the sentencing. Ms De Cicco further observed that explicit recognition by way of a legislative requirement that courts take into account whether an offence was committed in a family violence context would promote the practice of taking this matter into account.<sup>189</sup> Section 5(2)(daaa) of the Sentencing Act appears to have had limited use.<sup>190</sup> Notably, the effect of the High Court decision in *R v De Simoni*<sup>191</sup> is that an accused who is convicted of a basic offence cannot be sentenced on the basis of aggravating circumstances which would have warranted a conviction for a more serious offence, where the person was not convicted of that more serious offence. This may create practical difficulties in improving sentences which take account of all the circumstances in which a crime is committed.

### **Mandatory sentencing**

In its submission to the Commission, the Victorian Coalition reiterated former Victorian Attorney-General The Hon. Robert Clark's proposal to introduce a minimum four-year prison sentence for offenders who seriously injured their victims where the facts from which this offence arose also constituted a breach of an intervention order protecting the victim.<sup>192</sup>

Victoria Police's submission called for a specific variation on the above, namely, the introduction of 'scalable sentencing' to respond to repeated FVIO contraventions. Victoria Police explained that it may be viable to remove some sentencing options where contravention offences continue unabated. According to Victoria Police, this would enable a 'tightening of the net' where the behaviour does not fall within the range of the existing indictable offence of persistent contravention, reflecting the need to escalate the response if offending continues or escalates, rather than continuing to issue the same sanction in response to repeated behaviour. For example, the option of a financial penalty in sentencing could be removed. Victoria Police considers that, importantly, rather than prescribing a sentencing regime which would limit judicial flexibility, this option would see some lower-level sanctions fall away if offending continues.<sup>193</sup>

The Commission also heard about a related proposal (known as 'Rekiah's law'). Rekiah O'Donnell was shot and killed by her boyfriend, Nelson Lai. Mr Lai admitted that he had a history of verbally abusing, threatening and physically assaulting Ms O'Donnell, and being controlling, jealous and suspicious of her. He denied that he intended to kill Ms O'Donnell. He was found not guilty of murder but guilty of manslaughter. Jesse O'Donnell, Ms O'Donnell's brother, has proposed an amendment to the criminal law with the effect that any person who kills another person with a firearm, unless in self-defence, must be found guilty of murder.<sup>194</sup>

## A swift and certain approach to sentencing

The Commission heard from a number of stakeholders and witnesses about new approaches to sentencing criminal offenders, and new ways to use existing sentencing options that could apply to family violence offences.

There was discussion in submissions and at hearings about the potential benefits of more 'swift and certain' approaches to sentencing criminal offenders. This section discusses what is meant by a 'swift and certain' approach. It then briefly considers some ways in which 'swift and certain justice' may be achieved in Victoria, including pro-arrest policies, electronic monitoring devices, the potential use of community correction orders and the 'fast-tracking' model.

### What is meant by a 'swift and certain' approach?

A 'swift and certain' approach to justice is based on the idea that certainty of apprehension, and swift, relatively modest punishment, are more effective deterrents than the remote and uncertain prospect of a more severe punishment.<sup>195</sup> Typically, the principles of a swift and certain approach include:

- ▷ a clearly defined 'behavioural contract'—i.e. rules, clearly understandable to an offender, setting out the conditions of compliance and the consequences of non-compliance, so that they perceive punishment as certain
- ▷ consistent application of the above rules
- ▷ swift delivery of the consequences of non-compliance
- ▷ parsimonious use of punishment—the least amount of punishment necessary to bring about the desired behaviour change.<sup>196</sup>

In many cases, swift and certain initiatives also involve ongoing contact with the same judicial decision maker.<sup>197</sup> They may also involve a 'tiered' approach whereby sanctions imposed are tailored to the history, behaviour or characteristics of the offender.<sup>198</sup>

These principles, properly applied, are said to enhance the perpetrator's perception of the certainty, legitimacy and fairness of punishment, and maximise behaviour change while minimising the negative impacts of more severe punishment.

The Commission received evidence from Judge Eugene Hyman, an academic and former judge of the Superior Court of California who stated:

In my view it's extremely, extremely important in domestic violence cases... that the consequences to the extent that there are consequences need to be imposed as quickly as possible, one, for safety reasons, to communicate how important this is, and, two, because if it's not imposed then this allows the offender potentially to perpetrate additional violations on the theory that it's not serious, that the court isn't taking it seriously, probation isn't taking it seriously and then the perpetrator is able to say to the victim, 'See, you made a complaint and nothing happened' ...<sup>199</sup>

In recent years, the idea of swift and certain justice has gained traction, particularly in the United States and to an extent in the United Kingdom, as a basis for designing sentencing regimes and perpetrator programs. Professor Freiberg noted in his statement that some 160 perpetrator programs across 21 American states operate in adherence to the swift and certain approach.<sup>200</sup> Examples include the South Dakota 24/7 Sobriety Project,<sup>201</sup> the Hope Opportunity Probation with Enforcement (HOPE) Program<sup>202</sup> and the Domestic Violence Swift and Sure Sanctions program in Michigan.<sup>203</sup>

Research suggests that results from these programs have been promising in terms of compliance and reduced recidivism.<sup>204</sup> There is growing support for applying the principles of swift and certain justice in Australia, including in relation to family violence perpetrators.<sup>205</sup> Professor Freiberg, in his witness statement and in evidence before the Commission, urged 'serious consideration' of how this approach could be implemented in family violence matters.<sup>206</sup> In evidence, he emphasised that 'prison is not a long-term answer for anything', and expressed doubts about the 'transformative elements of prison'.<sup>207</sup> However, Professor Freiberg distinguished the use of longer-term prison sentences for more serious offending from the role of prison in a swift and certain approach, which is primarily to provide a 'short but unpleasant reminder that the particular action has had a consequence'.<sup>208</sup> He notes that what is missing in the Victorian system:

... is not so much the applicability of those prison sentences for serious offences, but ... the ability to provide short, certain, unpleasant sanctions, even if it is in a holding cell ... it might be for a day, it might be two days ... it's the reminder that certain actions will have swift and certain consequences.<sup>209</sup>

### **Legal and practical impediments**

Professor Freiberg noted a 'depressing' lack of swiftness or certainty in the current operation of sentencing for family violence offenders in Victoria. In evidence, he commented on delays in the court which may diminish the effectiveness of the eventual sentence, even if that sentence is quite stern:

When you get to court, there's no certainty that you will be convicted. There is no certainty about the punishment that you will get, the sanction imposed. So here you have an enormous length of time, and who knows what's happened in the meantime in terms of the behaviour of the offender. That's the worst possible outcome.

So we would then rely on imposing a severe sanction when it finally gets to court to make the point that, 'This behaviour is unacceptable; this behaviour is not to be tolerated; that you are not to repeat this behaviour', and let that be a message out there to all the people who have read 2,000 pages of your transcript to say, 'Yes, I get that message from the courts about what will happen to me.' It's a lifetime, 21 months; six months is a lifetime in a case and in an individual's life. So the answer is let's not try and ramp up the severity of the sanction to make up for the tragic failures of our system to be able to process people quickly.<sup>210</sup>

In his witness statement, Professor Freiberg gave the further example of an allegation of an FVIO contravention, which may result in the offender being arrested and brought before a court, often before being released on bail until the charges are heard. Subsequent delays in the Magistrates' Court often mean that 'charges may not be determined for a considerable period of time', such that 'in practice ... there is no immediate substantive sanction'.<sup>211</sup>

At both roundtable discussions and hearings, consideration was given to whether Victoria's current suite of sentencing options should be applied in a manner which more closely reflected a swift and certain approach without a change in the law.

According to Professor Freiberg, there are some legal and practical barriers which inhibit the uptake of a swift and certain approach. First, it is not clear how an immediate, short prison sentence could be imposed in many cases, under existing laws. Professor Freiberg noted that until a person is sentenced, a court has no power to impose an immediate jail term. An offender may have their bail revoked, but this is not a sentencing power. Professor Freiberg commented that there is a need to consider whether and how courts should have the power to take an offender into custody as soon as practicable once the offender commits, or is found guilty of, a breach offence so that the sanction for breach is swift and certain.<sup>212</sup>

Secondly, Professor Freiberg observed that there are practical difficulties in sentencing more offenders to short periods of imprisonment. He noted that Victoria's prisons are operating at capacity and under considerable strain. Immediate jail terms also place immense pressure on the courts, Victoria Legal Aid and police in terms of time, money and resources.<sup>213</sup>

Professor Freiberg concluded that the issue of the availability of prison beds, the absence of an appropriate sentencing power and the due process implications of subjecting an offender to incarceration without a court order must first be addressed.<sup>214</sup>

### **'Pro-arrest' policies**

Professor Freiberg suggested that 'pro-arrest' policies, whereby breaches were dealt with by exercise of the police's holding or remand powers, may align with a swift and certain approach, although he opposed a policy of mandatory arrest 'on the grounds that [he] oppose[s] any mandatory system which doesn't allow for sufficient discretion to treat the cases individually'.<sup>215</sup> Concerns about pro-arrest policies—in particular around the identification of a primary aggressor, and as part of broader concerns about the capacity of victims to make their own choices—are considered in Chapters 14 and 16.

### **Electronic-monitoring devices**

Professor Freiberg also addressed the potential of electronic monitoring technology to provide certainty of detection of offending, and thereby deterrence:

Electronic monitoring bracelets, telemetric devices, Safety Cards, they are all built on that swiftness of detection or certainty of detection. I think that's what we ought to explore ...

To the extent that ... [such devices produce] some action from the supervising authority, whether it is police or Corrections, they are very effective ... [T]he evidence is very strong [that] certainty of detection does change people's behaviour ... I would certainly explore those possibilities rather than doubling the maximum penalty and waiting 18 months.<sup>216</sup>

Assistant Commissioner Craig Howard, who is responsible for electronic monitoring services at Corrections Victoria, provided the Commission with a description of GPS technology (and similar technologies) for criminal offenders.<sup>217</sup> Mr Howard noted, for example, that serious sex offenders subject to supervision orders have used GPS bracelets.<sup>218</sup> The bracelet transmits their location back to an electronic monitoring centre via the mobile telephone network. Asked about the potential use of GPS technology for family violence offenders, Mr Howard noted that 'the technology will tell you potentially where you are, it won't tell us what you are doing', and that there may be some use for the technology if, as a condition of an order, offenders are excluded from a particular area.<sup>219</sup> Mr Howard also pointed out that the Magistrates' Court cannot, when imposing a community correction order, make an electronic monitoring condition.<sup>220</sup>

The Commission is aware of the use of GPS monitoring technology in overseas jurisdictions. A 2012 study examined the use of GPS technology in three sites in the United States.<sup>221</sup> The study indicated some short and long-term effects on re-arrest rates. The authors do note that the random assignment of individuals to GPS and non-GPS groups was not possible, so instead GPS and non-GPS groups were selected using relevant controls to make them 'as equivalent as possible on factors known to influence the outcomes'.<sup>222</sup> The report also concedes that as an outcome measure, 're-arrest may ... be problematic', as it does not capture incidents that are not detected or reported: 'a particularly common problem in domestic violence cases'.<sup>223</sup>

The Commission notes that electronic monitoring and surveillance of offenders is only one element of an overall case-management approach that is employed for offenders. Corrections Victoria manages offenders using a holistic case-management approach which involves a range of options (including, in appropriate cases, the use of electronic monitoring) to ensure offenders remain accountable and engaged:

[C]ase management, if you like, is the framework and vehicle which our staff use to engage with the offender so they will fulfil those conditions of the order and acquit their responsibilities back to the court.<sup>224</sup>

In relation to offenders subject to community correction orders, Corrections Victoria Commissioner Jan Shuard told the Commission that:

Corrections utilises risk assessment tools to assess an individual's risk of general re-offending and to identify criminogenic needs to be addressed throughout the case management process. Our aim is to have offenders embrace strategies to reduce their risk of re-offending and to be guided towards successful completion of their order.<sup>225</sup>

Devices for use by victims of family violence are considered in Chapter 9.

### **Use of community correction orders**

The Commission also heard about the potential of CCOs, alone or in combination with other sentencing options. For example, a CCO can include a condition that the offender will be monitored by the court.<sup>226</sup> As part of this condition, the court can stipulate a time or times at which the offender must reappear for their compliance to be reviewed.<sup>227</sup> The court may also stipulate information, reports or tests to be provided for the review, and may require or invite submissions from Corrections Victoria, prosecutors or other relevant parties. If the offender fails to appear, a warrant for their arrest may be issued.<sup>228</sup> To the extent that these conditions promote certainty that contravention will be detected, they are consistent with a swift and certain approach.

In addition, the CCO can be used in combination with a term of imprisonment.<sup>229</sup> The 2015 Sentencing Advisory Council monitoring report referred to above indicated increasing use of sentences of this kind. If judicial monitoring is used, this allows offenders to be monitored beyond their custodial sentence (and any parole period).<sup>230</sup>

As noted in the outline of sentencing options above, the CCO may include other conditions relevant to enhancing perpetrator accountability and victim safety, including conditions such as: excluding the offender from certain places or classes of places; imposing a curfew; prohibiting the offender from contacting certain persons; requiring the offender to participate in rehabilitation and treatment programs, be supervised and monitored by Corrections Victoria or electronically monitored (though only the County and Supreme Courts can make an electronic monitoring condition), including to ensure that they do not go to a particular place, or that they abide by a curfew.<sup>231</sup>

In *Boulton v The Queen*,<sup>232</sup> the Court of Appeal issued a guideline judgment on the use of CCOs. A guideline judgment is a means for the Court to provide comprehensive guidance to sentencing courts on a particular area of sentencing law, with a view to promoting a consistent approach and public confidence in the criminal justice system.<sup>233</sup> The Court in *Boulton* referred to CCOs as a 'radical new sentencing option, with the potential to transform sentencing in this State', and remarked that:

... the advent of the CCO calls for a re-consideration of traditional conceptions of imprisonment as the only appropriate punishment for serious offences. This in turn will require a recognition both of the limitations of imprisonment and of the unique advantages which the CCO offers.

...

... The sentencing court can now choose a sentencing disposition which enables all of the purposes of punishment to be served simultaneously, in a coherent and balanced way, in preference to an option (imprisonment) which is skewed towards retribution and deterrence.<sup>234</sup>

The CCO provisions could be used in a variety of ways to effect swift and certain sanctions for offending, including in family violence matters. For example, in some cases an offender may be placed on a CCO with a judicial monitoring condition and other appropriate (e.g. supervision and treatment) conditions. If the CCO is breached, they may be given a short sentence of imprisonment and then placed back on a CCO.<sup>235</sup>

### **Fast-tracking model**

The Commission was also made aware of the potential of the fast-tracking model which has been implemented at a selection of Magistrates' Court venues in Victoria for criminal charges in family violence cases.<sup>236</sup> The model, described in Chapter 16, provides for the accelerated listing and finalisation of charges relating to family violence. The Chief Magistrate has issued practice directions in respect of certain Magistrates' Court venues, which sets time limits for the listing and finalisation of these charges. Meeting those limits has required the cooperation of Victoria Police, which prosecutes the criminal charges.

The practice directions make clear that the model has been devised in response to 'the rate of recidivism for crimes of violence against intimate partners [being] much greater than crimes of violence against strangers ... usually the violence increases, in number and intensity'.<sup>237</sup> In evidence, Deputy Chief Magistrate Broughton described fast-tracking as a 'great model' which is 'having fantastic results'.<sup>238</sup> She noted that at Dandenong Magistrates' Court, one of the sites where the model was first rolled out, there had been a reduction in scheduled contest hearings over 12 months, from approximately 200 to approximately 38.<sup>239</sup>

Assistant Commissioner Luke Cornelius of Victoria Police also spoke to the benefits of the fast-tracking model. Assistant Commissioner Cornelius asserted that reducing delays in listing and finalising matters has also reduced the rate at which prosecutions are withdrawn due to the non-cooperation of witnesses (typically women and children affected by the charged violence). He reported a 58 per cent reduction in the proportion of withdrawals of prosecutions in his region over 12 months.<sup>240</sup> As Deputy Chief Magistrate Broughton explained:

Even with family violence matters, if you can get your complainant there to give your evidence, often the accused will plead guilty on the day ... getting people there and imposing the authority of the court and system does really deliver value ...<sup>241</sup>

Support for this approach was not unqualified. Ms Melinda Walker, a criminal law specialist with substantial professional experience in family violence who has herself survived family violence, expressed concerns that fast-tracking, and the more active, 'pro-arrest' approach of police which has been a corollary of this approach in some parts of Victoria, may compromise the legal rights of defendants in some instances:

There's been certainly a reaction by police to make application for more remands than ordinarily ... [and] a lot more people who are being remanded for family violence matters ... if someone is in remand there's more urgency to resolving their case. So particularly if there is only a preliminary brief in existence and very little evidence in existence at that time, certainly that person may concede a guilty plea really without any sufficient evidence if the outcome is to be their release.

...

[This is] not desirable in terms of the administration of justice or even natural justice. I don't necessarily disagree with the fast-tracking ... However, it has to be across the board. There has to be sufficient evidence in order to be able to advise your client appropriately.<sup>242</sup>

The fast-tracking model is further described in Chapter 16.

### **Use of judicial monitoring for family violence intervention orders**

Judicial monitoring techniques can also be employed in intervention order proceedings—for example, the respondent may be required to come before the court after a specified period, to confirm that they have not breached the intervention order, that there is no need to vary its conditions or that they have complied with conditions requiring them to attend behaviour change or other programs. To the extent that these techniques reinforce the respondent's certainty that any contravention of the order will be detected, they are consistent with a swift and certain approach. Such techniques may be effective in relation to high-risk or recidivist offenders.<sup>243</sup>

### **Guideline judgments**

Professor Freiberg proposed the use of a guideline judgment as a means of improving the consistency and quality of sentencing practices for both contravention offences, and general criminal offences involving family violence. He noted that a guideline judgment has the potential to be a 'method of guidance that does not unduly restrict judicial discretion'.<sup>244</sup> The potential purposes of guideline judgments may vary but as noted, they include promoting consistency in sentencing and confidence in the criminal justice system. When issuing a guideline judgment, a court may consider, for example, the weight given to different sentencing purposes, and the criteria by which a sentencing court may determine the gravity of an offence.<sup>245</sup>

On hearing and considering an appeal against sentence, the Court of Appeal may give a guideline judgment. The Court of Appeal can issue a guideline judgment on its own motion or on application by a party to proceedings.<sup>246</sup> A relevant matter would need to come before the Court of Appeal on appeal before the Court could issue a guideline judgment.

### **Publicising sentencing decisions**

The value of publicising court judgments was recently highlighted by the Court of Appeal in *Uzun v The Queen* where Maxwell P, President of the Court of Appeal, remarked:

Priest JA has referred to the importance of general deterrence and this Court's repeated statements that sentences imposed for family violence should be set at a level which will send a message to those—predominantly men—who might violently offend against domestic partners or former partners or family members.<sup>247</sup>

Plainly enough, the sentences which the courts impose will not serve that purpose unless the sentences and the reasons for them are properly publicised.

...

In view of the community concern about domestic violence and the importance of deterring it, those considerations are particularly pertinent in this area.

In the case of *DPP v Russell* (which was not related to family violence) Maxwell P also remarked on the importance of the government communicating the deterrent message:

... it is the responsibility of government to ensure public safety. And government must therefore take responsibility for communicating the deterrent message to those who need to hear it. That requires sustained effort and the commitment of substantial resources. Without that, the community will simply not derive the benefit—in greater public safety—which should flow from the painstaking work of sentencing judges and magistrates in this State. Self-evidently, if the message is not getting through no change in sentencing law can make the difference.<sup>248</sup>

## The way forward

The prosecution and sentencing of family violence offences present particular challenges. There are many reasons for this. Family violence is often hidden, so that few people other than the perpetrator and victim can directly attest to the violence. The ability or willingness of victims to give evidence may be hindered by trauma, shame, intimidation or a desire to maintain the relationship with the perpetrator, or for her children to have a relationship with their father. Family violence may also be constituted by a complex pattern of behaviour, not all of it criminalised or admissible as evidence.

Professor Douglas, whose evidence to the Commission is referred to above, has written extensively on the continuing challenges faced by the criminal justice system in responding to family violence. In a recent article, she describes the tension between the FVIO regime and the criminal law:

... problems associated with prosecuting domestic violence offences have been known about for some time. The perceived limitations of the criminal law were one reason why civil protection orders were introduced throughout Australia and other parts of the world during the 1980s. Civil protection orders are a much more accessible legal response for victims than the criminal justice process. A person who is experiencing domestic violence can obtain a civil protection order without assistance from police or prosecution services, the burden of proving the need for a protection order is much lower, the victim generally controls the process, civil protection orders can cover a wide range of behaviours outside the boundaries of traditional criminal law categories and breach offences exist as an incentive for the perpetrator to abide by the conditions of the protection order. While civil protection orders were originally expected to operate alongside criminal justice responses, protection orders have become the most common response to domestic violence throughout Australia, the United States of America and the United Kingdom. The focus on protection orders has led to claims that domestic violence has, in a practical sense, been decriminalised ... a focus on obtaining a protection order ... instead of prosecuting a substantive offence may give very little indication of the behaviour underlying the breach; it may lead to inappropriate or very low penalties being applied; and a breach offence can only be charged where there is a protection order already in place.<sup>249</sup>

Many of the issues raised with the Commission can be understood as expressing the concern, conveyed by Professor Douglas, that family violence has in some sense been 'decriminalised'. More specifically, the concern is that perpetrators are not charged or prosecuted for offences, and if they are, the sentences imposed are inadequate, and out of step with offences committed outside the context of family violence.

Family violence crimes are particularly insidious. Those who perpetrate them often exploit the trust, loyalty and vulnerability of their victims, which can make those victims less willing or able to report the perpetrator's crimes. Correspondingly, victims of these crimes often feel that they have been betrayed, abandoned or perhaps even blamed by the criminal justice system and those who enforce and apply it. The concerns that were raised with us reflect that experience.

In the Commission's view, these are legitimate concerns which deserve a considered and effective response. Changes to the law must be avoided which, while superficially or symbolically attractive, do not actually advance the safety of victims and the community, or the accountability of perpetrators. In addition, in the absence of comprehensive sentencing data, we do not have a clear sense of whether sentences for family violence offences are more or less severe than sentences imposed in other cases. Before contemplating new laws, we must ensure that they are necessary, and that we are making the best use of the laws already in place.

The Commission's response to proposed legislative changes is informed by this view. So too is our response to calls for harsher custodial sentences for family violence offenders. The Commission recognises that there will be cases where a long custodial sentence is the only appropriate sentencing option. However, the evidence the Commission heard on the limits of imprisonment highlights the complexity of these issues. Equally, evidence indicating that imprisonment has a disproportionate impact on particular—often vulnerable or disadvantaged—groups and communities strengthens the Commission's view that we should be circumspect in focusing on custodial sanctions above others. The Commission also acknowledges that there are many cases where it is difficult to obtain a conviction.

In some respects, a better measure of success may be the rate at which family violence offences are being prosecuted. If it is evident that prosecutors are showing an increasing willingness to prosecute offences, this would be not only encouraging, it would be relevant to gauging whether traditional views which tended to dismiss and trivialise family violence are diminishing, at least among those enforcing and prosecuting the law.

We are encouraged by the results of the 2015 Sentencing Advisory Council Monitoring Report to the extent that they show some improvement in the prosecution of general and aggravated contravention offences, and by the evidence of Victoria Police and the OPP about charging and prosecution practices. Unfortunately, our understanding of how charged offences (other than contravention offences) are subsequently sentenced is incomplete. Given that general criminal offences are not described in a way which identifies whether they occurred in the context of family violence, it is difficult to evaluate sentencing practices for family violence offences. In particular, Professor Freiberg's evidence emphasised the difficulties in comparing sentencing practices for offences committed in a family violence context with the same offences committed outside that context.

At present, the absence of comprehensive sentencing comparisons in Victoria makes it difficult to determine whether and to what extent current sentencing practices are deficient or inconsistent with wider sentencing practices. More specifically, it is difficult to identify trends in relation to particular offences or particular courts. Bodies engaged in appraising sentencing practices in Victoria, including this Commission, are hindered in their capacity to diagnose problems with sentencing practices and make evidence-based recommendations for change. As Victoria Legal Aid notes, while Sentencing Advisory Council data and recent Court of Appeal judgments suggest a positive shift in the judicial approach to family violence, comprehensive data is not available to advance evidence-based consideration of recent sentencing trends. Victoria Legal Aid further considered that any adjustments to the current laws relating to offences and sentences should be supported by a strong evidence base. At this time, VLA did not consider there is sufficient data to support change.<sup>250</sup>

The Commission agrees with this view. While it may be that developments in practice (like the addition of a mandatory family violence field in Courtlink, and improved links between police and court databases) assist in addressing this gap in our knowledge, it is likely that problems will persist. It may be more desirable to rely on a solution which is embedded and permanent. Accordingly, we consider the potential of 'designated' or 'flagged' offences to address this problem below.

The absence of comprehensive comparisons does not mean that nothing can be said about current sentencing practices. For instance, the Commission appreciates the concerns of the Sentencing Advisory Council and its stakeholders about the substantial use of fines, even in relation to aggravated contravention offences. The imposition of fines in cases of breaches intending to cause the victim fear or harm will often be out of step with community expectations. Further, fines may adversely affect women and children who are victims of family violence.

Though low-end sentencing options are not always inappropriate, their persistence might suggest that the robust approach of the Court of Appeal to family violence offending is not mirrored in some decisions in the Magistrates' Court. The Commission makes recommendations on addressing these issues below.

## Issues with family violence-related defences

The Commission accepts the validity of the concerns raised by Domestic Violence Resource Centre Victoria and others in relation to issues such as charging practices and the under-use of the family violence provisions in the Jury Directions Act and the Crimes Act.

In our view, under-use of the legislative provisions relating to family violence is unlikely to be cured by amending these provisions, for example, to compel judges to direct juries on family violence if relevant to matters in issue, or amending s 322J of the Crimes Act to align with the Family Violence Protection Act. A better way of ensuring that these provisions become part of the 'tool kit' of judicial officers and legal practitioners is through the improvement of training and education among legal practitioners and the judiciary.

In relation to DVRCV's suggestion that a specialist court list and specialist OPP unit is advisable for family violence homicides, the Commission certainly agrees that the nature and dynamics of family violence must be properly understood by judicial officers and legal representatives. But in our view this needs to occur across the legal workforce. The prevalence of homicides (particularly with women as victims) which involve family violence means that it is difficult, and may not be desirable, to restrict these matters to a specialist unit or list. Understanding family violence should be regarded as core business of courts and legal practitioners, including those involved in homicide trials.

The Commission makes recommendations about the improvement of training and education of legal services and judicial officers in Chapter 40. While many family violence matters may commence as FVIO proceedings in the Magistrates' Court, it is crucial that training extends to the higher courts—not just because they will hear the more serious offences relating to family violence, but because they will hear some appeals from the Magistrates' Court (including in relation to breaches of FVIOs). It is important that the legal practitioners and judicial officers involved in these appeals are equally familiar with the nature and dynamics of family violence, or they may not appreciate the conduct of proceedings, or decision, made at first instance.

In relation to DVRCV's suggestion that a panel of experts be available to provide evidence on family violence, the Commission notes that it is a matter for the prosecution and defence whether to call expert evidence. More broadly, the Commission notes our comments in Chapter 39 about the potential value of the Melbourne Research Alliance to end violence against women and their children. Part of the mission of the alliance is to encourage public and interdisciplinary understanding of family violence issues. The Commission encourages the Judicial College of Victoria, the Law Institute of Victoria and others delivering training and continuing education to professionals to engage members of the alliance and like groups in their training of legal professionals and judicial officers. The OPP and VLA may wish to consider identifying relevant experts who might be available to give evidence on family violence.

## Abolition of defensive homicide and new self-defence and duress provisions

The DVRCV also considered that the repeal of defensive homicide means that there is now no middle option for victims who kill their partners in circumstances where a context of family violence exists. In light of these concerns the DVRCV recommended a review of defences to homicide. The new self-defence and duress provisions introduced into the Crimes Act by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic) are intended to provide specifically for circumstances of family violence. The Commission considers that it may be worthwhile reviewing the effect of these new laws, together with the effect of the abolition of defensive homicide, with an emphasis on how the law is being applied in practice. The new laws would need to operate for some time before a review could be meaningful.

The Commission also notes that the combination of baseline sentences and the abolition of defensive homicide could mean that a woman who unreasonably believed she was defending herself would receive a long sentence for murder.

## Bail

The Commission agrees that there are opportunities to improve the consistency between FVIO and bail conditions and the information provided to bail decision makers.

In the Commission's view, recommendations further limiting the presumption in favour of bail are not necessary. The presumption of bail is an expression of the presumption of innocence: the bail applicant has not been convicted, and the purpose of bail is not to punish them. The exceptions currently in place reflect the distinctive considerations that may apply (in particular, a heightened risk to alleged victims) in cases of family violence, as expressed in the excerpt from the 2010 Australian Law Reform Commission report.<sup>251</sup>

Further, the Commission has some specific concerns about the recommendation in Judge Gray's findings (following the Luke Batty inquest) that consideration be given to re-enacting the former section 4(2)(c) of the Bail Act. As discussed, the former section 4(2)(c) provided that where an accused person is in custody for having failed to answer bail, a subsequent application for bail should be refused unless the accused person satisfies the court that the failure to answer bail was due to circumstances beyond their control. This provision was repealed following concerns raised by the Victorian Law Reform Commission that it had a disproportionate and punitive effect on Aboriginal and Torres Strait Islander people who had been charged with criminal offences.<sup>252</sup>

The Commission notes that some proposals for expanding the presumption against bail may, in any event, be overtaken by the Bail Amendment Bill 2015 (Vic), which at the time of writing is awaiting Royal Assent.

The Commission wholly agrees with Judge Gray's motive in exploring the suggestion that bail decisions accurately reflect and respond to the risk involved in a particular situation, and the history and circumstances of the parties.

To that end, the 'loophole' referred to by Judge Gray, which meant that bail (and attached conditions) was cancelled by the issuing of a bench warrant, must be rectified. Bail conditions must continue to operate until the warrant is executed and the person is brought before the court.

The Commission also recommends that, whether by amending the Bail Act or other means, bail decision-makers be required to consider whether there is a family violence safety notice or intervention order in place, and if so, ensure that bail conditions are compatible with the intervention order or safety notice conditions, unless to do so would pose a risk to the victim and/or protected person. In matters relating to family violence, decision-makers should be required to consider more broadly whether a risk of family violence exists which could be managed by appropriate bail conditions, a family violence intervention order, or both.

The Commission notes that the Victorian Government may also wish to consider similar requirements in sentencing proceedings.

In any matter before the court where there is a risk of family violence, it is incumbent on prosecutors to be aware of that risk, and to provide the court with relevant information. We make recommendations to encourage the seeking and provision of relevant information in such matters.

These recommendations are intended to ensure that family violence–related matters are raised in all appropriate cases, and to consolidate best practice in this regard.

We also recommend an ‘avoidance of doubt’ provision be added to section 4(2) of the Bail Act, to explain that an unacceptable risk of committing an offence or endangering the safety or welfare of the public can include an unacceptable risk of perpetrating family violence whilst on bail. However, this should only include a risk of perpetrating family violence where this constitutes a criminal offence (which would include a contravention of an existing FVIO or bail condition).

The Commission also considered the ALRC’s suggestions, which the Department of Justice and Regulation indicated had not been adopted, that judicial officers be given the ability to make family violence intervention orders at any stage during a criminal proceeding.

We are pleased to note that the OPP’s policy on family violence prosecutions indicates that they are clearly aware of the issues that prompted the ALRC’s recommendations, and instruct their prosecutors accordingly.

Requiring the OPP to encourage police to make an application, or to encourage the victim to apply, is obviously a less direct and perhaps less reliable route to an intervention order being made than providing for the court, by its own motion, to make an intervention order (either in a bail hearing or otherwise during criminal proceedings). This is also true for bail proceedings conducted by police—while police should be cognisant of any need to apply for an FVIO, enabling courts to make an intervention order provides an additional mechanism for the protection of family violence victims.

The Commission acknowledges the potential complexities in courts having an ‘own motion’ power to grant intervention orders. In particular, it is essential that this does not compromise the choices of victims of family violence, and that they and those subject to family violence intervention orders have the opportunity to participate in the making of any final orders. Accordingly, the Commission supports giving the court the authority to make interim intervention orders only, at any point in criminal proceedings. This will ensure that any immediate risk can be managed, but the matter can return to court to be resolved. We make recommendations to that effect.

## Recommendation 79

The Victorian Government legislate to empower courts to make interim family violence intervention orders on their own motion at any point during criminal processes—including bail proceedings and sentencing [within 12 months].

Finally, the Commission considered the suggestions that if granted bail, perpetrators of family violence should be bailed to a specific address; and the Family Violence Protection Act should expressly provide for them to be bailed to a relevant court support program, such as the Court Integrated Services Program.

It is already within the power of magistrates to bail to a specific address, and to grant bail on the condition that the bail applicant attend CISP. Indeed, the Bail Act expressly provides that the conditions of bail may include ‘residing at a particular address’ and ‘attendance and participation in a bail support service’.<sup>253</sup> We trust that the government’s planned expansion of CISP, and improved training for those in the justice system on the nature and dynamics of family violence will lead to such orders being made where appropriate.

## Recommendation 80

The Victorian Government [within 12 months] take the following action:

- ▷ encourage bail decision makers to seek, and prosecutors to provide, information on relevant risks of family violence in relation to a bail application
- ▷ whether by amendment to the *Bail Act 1977* (Vic) or by other means, provide that before setting or amending bail conditions, a bail decision maker must take into account:
  - ▷ whether there is a family violence safety notice or family violence intervention order in place. If so, the decision maker should ensure that the bail conditions are compatible with the notice or order conditions, unless to do so would pose a risk to the victim and/or protected person
  - ▷ in matters relating to family violence, whether there is a risk of family violence that could be managed by appropriate bail conditions or a family violence intervention order, or both
- ▷ add an avoidance of doubt provision in section 4 of the *Bail Act* to state that an unacceptable risk of committing an offence or endangering the safety or welfare of the public may include an unacceptable risk of perpetrating family violence whilst on bail
- ▷ enact legislation to ensure that, if a warrant for the arrest of an accused is issued, bail conditions continue to operate until the arrest warrant is executed and the person is brought before the court.

## Parole

As with bail decision-makers, parole decision-makers must be cognisant of family violence issues. It is unnecessary to describe the current processes by which family violence risks are taken into account.

Our expectation is that our recommendations for ‘flagging’ family violence offences (recommendation 81) will help to simplify and improve the process by which Community Correctional Services and the Parole Board can identify family violence offenders and apply these measures. We also note that these assessments and associated instructions and policies should be required to comply with the revised CRAF (see Chapter 6).

## New offences

The Commission is not satisfied that new offences specific to family violence—either criminalising family violence generally, or specific forms of family violence—are presently necessary or appropriate to keep victims safe and hold perpetrators to account.

There are many existing offences which may apply to perpetrators of family violence. These include threats to kill, inflicting serious injury, committing a sexual offence, destroying or damaging property, blackmail and aggravated burglary. If these offences are not being applied properly to family violence, this may reflect the approach, attitude or expertise of those applying or prosecuting these offences. Simply changing the laws by carving out a specific response for family violence is not likely to address those underlying deficiencies.

The Commission accepts the concerns raised by Ms Fatouros, Professor Freiberg, the ALRC and others about the potential ineffectiveness and adverse consequences of legislative change.

It is essential to the fair and equal operation of the criminal law that all parties, including the accused, understand precisely what the elements of the offence are—that is, what acts and states of mind the prosecution must prove beyond reasonable doubt for the accused to be found guilty—and what conduct of the accused is said to meet those elements. There is a risk that a new offence criminalising family violence will be interpreted to include conduct which is difficult to prove to a criminal standard, or conduct which may not warrant criminalisation. There is also a related risk that prosecutors would not make sufficient or consistent use of any new offences.

## Aggravated offences

The Commission does not support changing the law to provide a higher maximum penalty for existing offences when they are committed in the context of family violence.

The Commission shares the views of the ALRC on this point. While acknowledging the educative and symbolic functions of aggravated offences, it is not clear that a familial context, on its own, will always be a sufficient basis to expose an accused to a higher penalty—just as it is not clear that an offence committed outside a familial context is always, or usually, less serious, and so warrants a lesser penalty.

The Commission notes that the dynamics which may make an offence committed in the context of family violence more egregious, such as the abuse of power, trust, vulnerability and the exploitation by the perpetrator of the victim's reluctance to report them to the authorities, may also all exist outside a familial context, and can be taken into account under existing sentencing principles.

## Designated offences

As noted above, because general criminal offences (such as grievous bodily harm, burglary, and rape) are not described in law in a way which identifies whether they occurred in the context of family violence, it is difficult to evaluate sentencing practices for family violence offences.

This gap in sentencing data also means there is a risk that those involved in administering prison, parole, bail and post-release programs will be unaware of an offender's family violence history. This could lead to inappropriate conditions being imposed or risks not being properly evaluated. For example, Corrections Victoria may be unaware of the family violence-related nature of a person's offending, and so fail to offer appropriate programs in prison and post-release.

In addition, those individuals and bodies who need to be informed of a person's criminal history—whether for the purposes of treatment or evaluating their suitability for certain kinds of employment—may be disadvantaged if the family violence-related nature of the offending is not apparent from a person's criminal record.

Accordingly, the Commission considers that the introduction of a family violence 'designation' or 'flagging' for existing offences could be a positive and useful development. This could be done by appropriate amendment to the Family Violence Protection Act and criminal procedure rules, to ensure that the link between an offence and a context of family violence is noted in the way an offence is described, including on an individual's criminal record.

The Commission's intention in making this recommendation is not that crimes committed in the context of family violence should be separated or necessarily subject to different principles from offences committed outside that context. Rather, the Commission's intention is to make it easier to see when an offence occurred within a family violence context, in order to assess both the way perpetrators are sentenced, and the way they are dealt with after sentencing.

## Recommendation 81

The Victorian Government ensure that offences committed in the context of family violence are appropriately 'flagged' [within two years]—for example, by:

- ▷ enhancing current links between Victoria Police's, courts' and Corrections Victoria's databases
- ▷ amending the *Family Violence Protection Act 2008 (Vic)* to deem criminal offences committed in the context of family violence to be 'family violence offences' for the purposes of being recorded in relevant databases.

## Persistent contravention offence

The offence of persistent contravention requires that three contraventions of a family violence intervention order or safety notice occur within 28 days. This provision seeks to capture the persistent nature of the contraventions over a short period of time that demonstrate a disregard for the law and for the safety and wellbeing of the victim.

As this offence has only been operating since April 2013, the Commission is not prepared to recommend an amendment at this stage. However, the research presented to the Commission from the Crime Statistics Agency on recidivist perpetrators of family violence indicates that there will be a cohort of offenders who repeatedly deliberately contravene an FVIO, but whose contraventions do not occur within the 28-day period. To the extent that at least some of these contraventions show a serious disregard for the law or for the victim's safety, they should arguably be subject to the persistent contravention offence. The Commission therefore recommends that the Victorian Government review the offence, with a view to possibly extending the 28-day period. Any decision to that end should be informed by consultations with relevant stakeholders, and based on a clear understanding of how the existing offence is used and the consequences (both in practice and legal principle) of applying the offence to a larger, more varied cohort of perpetrators.

The Commission also notes the anomaly identified by Deputy Chief Magistrate Broughton in evidence. The maximum term of imprisonment which can be imposed for a single indictable offence tried summarily is two years, and in respect of several offences committed at the same time, five years. This could have the unusual consequence that a single charge for a persistent breach would only attract a two-year sentence, while three individual contravention charges could attract a sentence of five years (even though the conduct involved may be identical).

Addressing this issue is a complex proposition. It may be that if a single charge (albeit encompassing three contraventions) is sufficiently serious to warrant a sentence greater than two years, it should be tried in the higher courts. In practice, it may be uncommon for three serious contraventions to occur without there being distinct criminal conduct which is also charged and co-sentenced (such that a five-year maximum would be open to the magistrate). In any event, there are good reasons why the length of a sentence that may be imposed in a summary hearing is limited—not least because a defendant exposed to a higher sentence should generally have the benefit of a jury trial. For present purposes, the Commission would encourage the Victorian Government to consider this issue.

## Recommendation 82

The Victorian Government review section 125A of the *Family Violence Protection Act 2008 (Vic)* to determine whether the 28-day period within which contravention relating to the same person must occur to establish this offence should be extended [within 12 months].

## Sentencing provisions

The Commission does not support the addition of family violence as a mandatory consideration or aggravating factor in sentencing. Further, the Commission does not consider family violence offences to be suitable for mandatory minimum sentences, baseline sentences or 'serious offender' provisions and does not support the introduction of 'Rekiah's law'.

The addition of family violence as a factor that must be considered by a sentencing court is not likely to substantively improve the sentencing process. It is already consistent with existing law for a court, in appropriate circumstances, to take into account the fact that a particular victim was in a position of vulnerability; that the offence involved a breach of trust; that the perpetrator had offended in the past; and that the relevant offending is prevalent in society. These factors may be relevant in many family violence cases.

Similarly, given that aggravating factors in sentencing are established primarily at common law in Victoria, it is not appropriate or necessary to amend legislation to stipulate that family violence is a specific aggravating factor in sentencing. Clearly, there will be many cases where a context of family violence will make an offence more serious. There will also be cases where it will warrant a more serious or punitive sentence. The Court of Appeal decisions referred to above illustrate that both aggravating and mitigating factors may extend to a context of family violence where appropriate.<sup>254</sup>

The endless variety of circumstances that may arise makes it difficult to predict how one feature of a case will interact with all the others. Stipulating that courts must, owing to one particular variable and regardless of all other variables, treat a case in a particular way tends to undermine the court's ability to impose an appropriately tailored sentence. There will be circumstances where exposing a person to a higher sentence solely because of a circumstance of family violence will not be appropriate. There might, for example, be a situation where the offender had previously been subjected to violence by the person who was the victim of the offence; there might also be acute psychiatric or psychological factors which should be dealt with to prevent that person from re-offending, and which are better dealt with through a community correction order than a prison sentence.

## Encouraging best practice

The Commission was presented with a number of recommendations for change which focused on encouraging best practice and using existing laws more effectively, rather than legislative change.

### Encouraging a swift and certain approach to justice

The Commission believes there is proven value in a swift and certain approach to justice, and substantial room to improve Victorian sentencing practices to reflect this approach.

The Commission accepts that there are some significant obstacles to the adoption of swift and certain approaches in Victoria. Many of the most prominent examples of swift and certain justice programs operate in the United States. In many cases these programs are facilitated by settings which differ from Victoria: for example, sentencing powers which enable an immediate prison sentence to commence on breach of probation. Given the complex matters of practice and principle raised—and ramifications which are likely to extend beyond family violence—these settings should not be altered without substantial research and consultation.

At the same time, the Commission considers that there is considerable potential to adopt swift and certain practices under existing laws. The Commission endorses the view of the Court of Appeal in *Boulton v The Queen* that the CCO represents a sentencing disposition which, in suitable cases, can coherently balance all of the purposes of punishment. CCO conditions can provide continuing contact with the court and the same judicial officer, as well as compelling the perpetrator to engage with the causes of their offending. CCO conditions can also offer greater certainty that any contravention of the CCO, or further criminal conduct, will be detected and conditions can be made consistent with any FVIO conditions in place. For these reasons, the CCO may well be a sound vehicle for holding the perpetrator to account, reducing the likelihood of further offending, keeping the victim and the community safe, and providing both victims and perpetrators with a sense of procedural fairness. In addition, the Commission notes that the CCO can be imposed alongside other sentencing options, producing a mutually reinforcing effect.

Deferring the sentencing of a perpetrator to allow them to demonstrate a capacity to avoid re-offending, and to undertake programs addressing issues related to their offending, can also be a valuable mechanism in appropriate cases.

The Commission further accepts that the fast-tracking model enhances the immediacy and certainty of punishment. In the Commission's view, its expansion to other court regions should be seriously considered. In due course, expanding its scope might also be explored: we note, for example, that it may not apply in relation to a breach of a CCO, although the circumstances may involve family violence.<sup>255</sup>

Pro-arrest approaches may also play a role. However, as noted in Chapter 14, such approaches can give rise to difficulties, particularly in respecting the choices of the victim and identifying the primary aggressor.

In relation to the use of electronic monitoring and surveillance technology, the Commission does not at this stage propose an amendment to the current laws on the use of this technology. The Commission considers, however, that further consideration should be given to the use of such technology for monitoring family violence offenders as part of an overall case-management approach (including considering costs and the adequacy of the current technology). We note that while GPS monitoring is part of the management of some offenders, it is not a substitute for a nuanced and comprehensive risk management strategy. Risk assessment and management is considered further at Chapter 6.

More generally, the Commission notes that in some of its manifestations, the swift and certain approach is concerned almost entirely with deterring offenders and consequently protecting the community. This is a laudable objective but is not, on its own, a complete response to offenders. We also need to address the other purposes of sentencing—denunciation, punishment, and rehabilitation—and beyond these, we should seek to address the root causes of offending, both in particular cases and at a societal level, and to assist victims of family violence in all aspects of their recovery. These matters are further explored in Chapters 18, 20 and 36.

Although the viability of a swift and certain justice approach in Victoria and Australia has been the subject of some academic work and discussion, in the Commission's view, it would be worthwhile advancing this discussion and considering the practical viability and means of implementing swift and certain approaches in Victoria—whether through changes to the law, or changes to practice under existing laws (or both).<sup>256</sup> A review of this kind could be undertaken by the Victorian Sentencing Advisory Council, and its findings considered by the Victorian Government. We note that the review could consider not only criminal techniques and sanctions, but, for example, the use of judicial monitoring and similar measures in FVIOs, to the extent that this might lead to fewer contraventions of such orders.

In the interim, the Victorian Government should also consider more immediate and discrete ways to remove barriers to a swift and certain approach. A specific example is raised by the Magistrates' and Children's Courts in their submission. The submission notes that the *Magistrates' Court Act 1989 (Vic)* only provides power to issue a remand warrant when a person has been charged with an offence or is a witness, or as authorised by any other Act. On their interpretation, this may mean there is no power to issue a warrant to remand in custody a respondent to an FVIO who has been arrested under the application and warrant process. As a result 'a risk exists that a respondent may be remanded which could well constitute a false imprisonment'.<sup>257</sup>

## Recommendation 83

The Sentencing Advisory Council report on the desirability of and methods for accommodating 'swift and certain justice' approaches to family violence offenders within Victoria's sentencing regime [within 12 months].

### A guideline judgment

Professor Freiberg suggested a guideline judgment on sentencing for family violence offences as a means of improving the consistency and quality of sentencing practices for both contravention offences, and general criminal offences involving family violence. A guideline judgment has the potential to grapple with the practical and conceptual nuances of the sentencing process. It may therefore have greater prospects of influencing what judges and magistrates do than other approaches to reform.<sup>258</sup>

As described in Chapter 16, the great majority of family violence matters are heard in the Magistrates' Court (including some 96 per cent of contravention charges). For contravention and other family violence-related offences to be the subject of a guideline judgment, a matter would have to come before the Court of Appeal. Nonetheless, in the Commission's view this course warrants serious consideration—both because of the potential need for sentencing practices to more uniformly reflect recent learnings and best practice in family violence jurisprudence, and because a guideline judgment has the capacity to effect change without placing undue limits on judicial discretion. The Commission suggests that the Director of Public Prosecutions take steps to identify a suitable case for the issue of a guideline judgment on sentencing for family violence offences.

In the interim, we suggest that all Victorian courts have regard to the concerns expressed by the Sentencing Advisory Council, to their Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders (2009), and to the Judicial College of Victoria's Family Violence Bench Book.

## Recommendation 84

The Director of Public Prosecutions consider identifying a suitable case in which to seek a guideline judgement from the Court of Appeal on sentencing for family violence offences [within two years].

### Publicising sentencing decisions

The Commission agrees that publicising the court's sentencing reasons more widely and regularly is an important part of influencing the practices and attitudes of people in the justice system, and in the wider community. On this point, the Commission endorses the comments of Justice Maxwell, President of the Court of Appeal, in *Uzun v The Queen*,<sup>259</sup> referred to above.

A stronger focus on family violence matters in the media has helped to highlight the nature and gravity of this type of offending. Comprehensive media coverage is likely to have a greater influence on public awareness than any other single avenue. However, the Commission encourages the Victorian Government to investigate other, more targeted mechanisms—for example, via court websites, the Law Institute of Victoria, the Victorian Bar Council and the Judicial College of Victoria—to ensure significant sentencing reasons are published regularly.

### Victims of crime reference

The Victorian Law Reform Commission is currently preparing a wide-ranging report into the role of victims in criminal proceedings.

Some of the concerns and suggestions for reform raised with us deal with broad or complex issues of evidence and procedure. In our view, these issues may be best dealt with by the VLRC as part of its ongoing work. For example, the Magistrates' Court and Children's Courts of Victoria suggested that a statutory scheme for hearings in criminal trial proceedings where the complainant is a child or is cognitively impaired should be extended to summary contested hearings in the Magistrates' and Children's Courts.

In addition, Deputy Chief Magistrate Broughton noted in her evidence that whereas in proceedings for contravention of a family violence intervention order leave under the Family Violence Protection Act must be sought for a child to give evidence, leave under the Act is not required for that child to give evidence in proceedings relating to a general criminal offence—unlawful assault, or criminal damage, for example—even where that offence may be associated with family violence, and even involves the same behaviour that constituted the contravention.

These issues are part of a broader discussion about the procedural and evidentiary rules which apply to children, people with cognitive impairments, and complainants in sex offence cases. In our view, it would be appropriate for the VLRC to consider these issues as part of its work.

A discrete issue concerns improvement of assistance provided to victims in preparing victim impact statements, and the use of victim impact statements in a wider range of matters. We anticipate the VLRC will provide guidance on these issues. We have also recommended improvements in the provision of duty lawyer services and pre-hearing support for parties involved in both civil and criminal proceedings in Chapter 16.

## Endnotes

- 1 Victorian Law Reform Commission, 'The Role of Victims of Crime in the Criminal Trial Process', Consultation Paper (July 2015) 3.
- 2 As noted in Chapter 16, criminal offences in Victoria are classified as indictable or summary offences. Certain indictable offences may be tried summarily (usually in the Magistrates' Court of Victoria). Others must be tried by jury in the higher courts. See *Criminal Procedure Act 2009* (Vic) ss 27–30; *Sentencing Act 1991* (Vic) s 112; *Crimes Act 1958* (Vic) s 2B.
- 3 *Family Violence Protection Act 2008* (Vic) ss 37, 123. The fine is 240 penalty units; at the date of writing, a penalty unit is \$151.67: *Monetary Units Act 2004* (Vic) s 5; Victoria, Special Gazette, No S86, 17 April 2015.
- 4 *Family Violence Protection Act 2008* (Vic) ss 37A, 123A, 125A. The fine is 600 penalty units. Notably, s 125A(5) specifies that a person convicted or acquitted of this offence shall not be subsequently prosecuted for a contravention offence in respect of the same circumstances or period.
- 5 *Ibid* s 81(1).
- 6 *Ibid* s 81(2).
- 7 Note that police may in any event order an FVIO/FVSN respondent to surrender a weapon, firearms authority or ammunition, and failing to comply is punishable by fine: *ibid* ss 28, 158, 163.
- 8 *Ibid* ss 129–30, 153. Only certain courts may order counselling or a counselling eligibility assessment.
- 9 *Crimes Act 1958* (Vic); *Summary Offences Act 1996* (Vic).
- 10 *Ibid*.
- 11 *Criminal Procedure Act 2009* (Vic) ss 29, 160(2); *Sentencing Act 1991* (Vic) ss 112, 113B.
- 12 *Criminal Procedure Act 2009* (Vic) s 29(1).
- 13 *Sentencing Act 1991* (Vic) s 7.
- 14 A custodial sentence (imprisonment or similar) cannot be imposed unless a drug treatment order or community correction order (CCO) is unfit to achieve the sentencing purpose(s), nor a drug treatment order unless a CCO cannot achieve the sentencing purpose(s), nor a CCO unless a fine cannot achieve the sentencing purpose(s), nor a fine if dismissal, discharge or adjournment will serve the purpose(s): *ibid* ss 5, 7.
- 15 *Ibid* ss 9B, 10.
- 16 See *ibid* ss 32, 82AA, pt 3 div 2 sub-div 1C, pt 5 divs 1–2.
- 17 *Ibid* s 5A.
- 18 *DPP v Walters* [2015] VSCA 303, 2 [9].
- 19 See Sentencing Advisory Council, *Sentencing Guidance Reference* (14 January 2016) <<https://www.sentencingcouncil.vic.gov.au/projects/sentencing-guidance-reference>>.
- 20 *Sentencing Act 1991* (Vic) ss 47–48Q. For a discussion of the operation and effects of the CCO, see Joe Clare and Sarah Krasnostein, 'Community Correction Orders in the Higher Courts: Imposition, Duration and Conditions' (Victorian Sentencing Advisory Council, October 2014); Geoff Fisher and Stephen Farrow, 'Community Correction Orders: Monitoring Report' (Victorian Sentencing Advisory Council, February 2014); Geoff Fisher, 'Community Correction Orders: Second Monitoring Report—Pre-Guideline Judgment' (Victorian Sentencing Advisory Council, September 2015).
- 21 *Sentencing Act 1991* (Vic) ss 43–4, 83AD, 83AS.
- 22 *Ibid* s 38(1).
- 23 *Ibid* ss 7(g), (i), 70, 72, 74–9.
- 24 Proceedings on an application for compensation or restitution may involve either party giving evidence, calling witnesses and, if evidence is given, being cross-examined or re-examined: *ibid* pt 4 divs 1–2. 'Injury' can include actual bodily harm as well as grief, distress, trauma, mental illness or exacerbation of a mental illness, and pregnancy: *ibid* s 85A.
- 25 For detailed information on sentencing in Victoria, see Sentencing Advisory Council, *Sentencing Law in Victoria* (13 June 2014) <<http://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-law-victoria>>.
- 26 *Sentencing Act 1991* (Vic) s 5(1).
- 27 *Ibid* s 5(2). This is not the full list of considerations.
- 28 See, eg, *R v Verdins* (2007) 16 VR 269.
- 29 The 'common law' is that part of the law which is established over time by judicial decisions, principles and customs, rather than enacted through legislation.
- 30 See Judicial College of Victoria, *Victorian Sentencing Manual*, Victorian Sentencing Principles 6 <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm>>; *Interpretation of Legislation Act 1984* (Vic) s 51; *Azzopardi v The Queen* (2011) 35 VR 43 372; *R v Franklin* [2009] VSCA 77; *Pearce v The Queen* (1998) 194 CLR 610; *R v Storey* [1998] 1 VR 359; *Veen v The Queen* [No 2] (1988) 164 CLR 465; *Lowe v The Queen* (1984) 154 CLR 606; *Postiglione v The Queen* (1997) 189 CLR 295; *R v Taudevin* [1996] 2 VR 402. See *Sentencing Act 1991* (Vic) ss 1, 5, pt 2A.
- 31 *Children, Youth and Families Act 2005* (Vic) s 362. For a detailed discussion of the sentencing of children, see Hilary Little and Tal Karp, 'Sentencing Children and Young People in Victoria' (Victorian Sentencing Advisory Council, April 2012).
- 32 *Pasinis v The Queen* [2014] VSCA 97, 6 [53].
- 33 *Ibid* 6–7 [54].
- 34 *R v Cotham* [1998] VSCA 111, 3 [14].
- 35 *Filiz v The Queen* [2014] VSCA 212; *R v Goodall* [2000] VSCA 106.
- 36 [2015] VSCA 292.
- 37 [2014] VSCA 119.
- 38 *Marrah v The Queen* [2014] VSCA 119, 10 [25]; *Uzun v the Queen* [2015] VSCA 292, 8–12 [30]–[43].
- 39 Dennis Byles and Anusha Kenny, 'Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report' (Victorian Sentencing Advisory Council, December 2015) 7.
- 40 Statement of McWhirter, 27 July 2015, 4 [17].
- 41 Statement of Champion, 11 August 2015, 3 [20]–[25].
- 42 *Ibid* 3 [23].
- 43 Director of Public Prosecutions and Office of Public Prosecutions, Annual Report 2014–15 (2015) 10.
- 44 Byles and Kenny, above n 39, 20.
- 45 Emma O'Neill and Donald Ritchie, 'Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention—Monitoring Report' (Victorian Sentencing Advisory Council, September 2013); *ibid*.
- 46 O'Neill and Ritchie, above n 45, 31–3.
- 47 Byles and Kenny, above n 39, xii.
- 48 *Ibid* 36.
- 49 *Ibid* xii, 42.
- 50 *Ibid* xii.
- 51 See Sentencing Advisory Council, *Reoffending Following Sentencing for Contravening a Family Violence Intervention Order or Safety Notice* (14 January 2016) <<https://www.sentencingcouncil.vic.gov.au/projects/reoffending-following-sentencing-contravening-family-violence-order>>.

52 Transcript of Freiberg, 6 August 2015, 2129 [26]–[31].

53 Helen Cockburn, 'Sentencing of Adult Family Violence Offenders' (Final Report No 5, Tasmanian Sentencing Advisory Council, October 2015) 32.

54 Statement of Bond, 4 August 2015, 6 [24]–[25].

55 *Ibid* 6 [25].

56 Neil Donnelly and Suzanne Poynton 'Prison penalties for serious domestic and non-domestic assault' (Bureau Brief No 110, NSW Bureau of Crime Statistics and Research, October 2015) 1.

57 *Ibid* 1, 6.

58 Magistrates' Court of Victoria, 'Royal Commission into Family Violence—Request for data and information' (30 June 2015), produced in response to the Commission's request for information dated 5 June 2015.

59 See, eg, Magistrates' Court of Victoria and Children's Court of Victoria, 'Information Request Response' (30 June 2015), 4, produced in response to the Commission's request for information dated 5 June 2015.

60 See, eg, *DPP v Bracken* [2014] VSC 94. The relevant rulings are concerned with previous section 9AH of the *Crimes Act 1958* (Vic), which is replicated in part by current section 322J of the *Crimes Act 1958* (Vic).

61 Victorian Law Reform Commission, 'Defences to Homicide: Final Report' (2005) 105.

62 *Ibid*.

63 For a comprehensive examination of the Victorian experience of homicide law reform, see Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015).

64 Victoria, Parliamentary Debates, Legislative Assembly, 3 September 2014, 3135 (Martin Pakula).

65 Note that the circumstances in which a person may have acted in self-defence include the defence of themselves or another person, the protection of property, or the prevention or termination of the unlawful deprivation of the liberty of themselves or another person. However, if invoking the defence against a murder charge, they must have believed on reasonable grounds that their actions were necessary to defend themselves or another against death or really serious injury: *Crimes Act 1958* (Vic) s 322K.

66 As with self-defence, a person can only claim duress in defence against a murder charge if threatened with death or really serious injury: *ibid* s 322O.

67 *Ibid* s 322M.

68 *Ibid* s 322P.

69 *Ibid* s 322J.

70 *Jury Directions Act 2015* (Vic) ss 58–60.

71 Bail is the conditional release of an accused person from custody on the basis of the accused undertaking to appear in court at a late date: *Bail Act 1977* (Vic).

72 *Ibid* s 5.

73 *Ibid* s 5(2A).

74 *Ibid* s 4.

75 Subject to the court being satisfied that these 'show cause' circumstances apply: *ibid* s 4(4)(ba). In most cases, whether bail is justified will depend on the same kinds of considerations as govern the 'unacceptable risk' assessment: *Re Asmar* [2005] VSC 487; *R v Paterson* (2006) 163 A Crim R 122.

76 *Sentencing Act 1991* (Vic) s 8K.

77 *Ibid* ss 8L–8M.

78 *Ibid* ss 8K–8S. In some cases it is not read aloud, but is still taken into consideration by the sentencing judge.

79 *Ibid* s 8A(1).

80 *Ibid* s 8A(2), (3). See also statement of Reaper, 17 July 2015, Attachment 2.

81 *Sentencing Act 1991* (Vic) s 8E.

82 *Ibid* ss 48LA. See also Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 10.

83 *Corrections Act 1986* (Vic) pt 8 div 5.

84 Debbie Kirkwood and Mandy McKenzie, 'Justice or Judgement? The Impact of the Victorian Homicide Law Reforms on Responses to Women Who Kill Intimate Partners' (Discussion Paper No 9, Domestic Violence Resource Centre Victoria, 2013).

85 Domestic Violence Resource Centre Victoria, Submission 945, 67–8.

86 *Ibid* 68.

87 *Ibid*.

88 *Ibid*.

89 *Ibid* 71–2.

90 *Ibid* 69.

91 *Ibid* 8.

92 *Ibid* 70.

93 Domestic Violence Resource Centre Victoria, Submission 945, 70–1. See also, Legislative Council Select Committee on the Partial Defence of Provocation, Parliament of New South Wales, 'The Partial Defence of Provocation' (2013) 166.

94 Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence—A National Legal Response: Final Report' (ALRC Report No 114, NSWLRC Report No 128, Commonwealth of Australia, 2010) 419 [10.31].

95 *Ibid*.

96 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015) 30 [156]–[159].

97 *Ibid* 107 [11].

98 Victorian Law Reform Commission, 'Failure to Appear in Court in Response to Bail: Final Report' (June 2002) 19–23.

99 Coroners Court of Victoria, above n 96, 41 [218], 96 [530]–[533].

100 *Bail Act 1977* (Vic) s 4(4).

101 Victoria Police, Submission 923, 13.

102 *Ibid*.

103 Centre for Innovative Justice—01, Submission 93, 55; No To Violence; Men's Referral Service, Submission 944, 56, 71.

104 Law Reform Commission of Western Australia, 'Enhancing Family and Domestic Violence Laws: Final Report' (Project No 104, June 2014) 136.

105 *Ibid* 137.

106 *Ibid* 136 n 16.

107 Note we use the term 'bail decision-maker' because this may include a court, bail justice, police officer or others empowered to determine bail.

108 *Bail Act 1977* (Vic) s 4.

109 *Ibid* s 18AD.

110 *Ibid* ss 4, 18AD.

111 *Ibid* s 8. Note, however, that the accused may not be cross-examined, nor an enquiry made of the accused, as to the charged offences and that the *Evidence Act 2008* (Vic) applies with respect to privilege.

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- 149 Martin Jackson et al, 'Acquired Brain Injury in the Victorian Prison System' (Corrections Research Paper Series No 4, Department of Justice, 4 April 2011) 6.
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# 18 Perpetrators

## Introduction

This chapter focuses on perpetrators of family violence. Evidence shows that most perpetrators of family violence are men. As a result, most perpetrator policies and interventions have focused on adult men in the context of sexual violence or intimate partner violence against women. The perpetration of family violence in other relationships (for example, adolescents who use family violence and elder abuse) is discussed in more detail in dedicated chapters elsewhere in this report. However, this chapter canvasses the lack of programs available to address violence that occurs in other contexts, and the specific circumstances associated with women who have used violence.

The purpose of this chapter is to consider many of the issues that underpin the way we conceptualise perpetrators and how we try to change their behaviour. We unpack the various notions associated with the 'perpetrator accountability'. These range from the view that genuine accountability can be found only in collective condemnation in the courtroom or the prison cell; to the idea that guiding perpetrators to confront their own behaviour and attitudes, and take responsibility for them at a personal level, is more likely to stop offending behaviour in the future.

The chapter also reflects the spectrum of views on the best way to effect behavioural change in men. The Commission heard some contend that the priority for any intervention should be addressing entrenched views held by perpetrators arising from gender inequality at a societal level, while others considered it more effective to design interventions based on a broader range of risk factors and circumstances of individual men. This flows into differences of opinion on the weight to be applied to particular causative factors of family violence in designing an effective system-wide response. However, the Commission heard of an increasing interest in blended programmatic approaches.

We present the limited information available about perpetrators, noting that there is no stereotypical profile of a perpetrator. However, we do explore individual risk factors for perpetrators, in particular mental illness and drug and alcohol abuse, noting the evidence that suggests that these risk factors can be associated with the incidence and severity of violence for some, but not all, people. We also explore the available trend data on repeat family violence offenders, partly as recidivism is an indicator of failed intervention, but also due to the disproportionate amount of harm some recidivist offenders can cause. There is a scarcity of research and data on perpetrators which demonstrates the need for further work in this area.

The second section of this chapter discusses some of the challenges and opportunities relevant to responding to perpetrators of family violence. As men's behaviour change programs (MBCPs) are currently the main programmatic intervention to address men's violence against women, this chapter examines the referral pathways, design and effectiveness of MBCPs in both community and correctional settings. It also examines the way in which fatherhood can act as a motivator for perpetrators, and explores programs designed to help fathers gain insight into the impact of their violence on their children to promote positive change. We describe the few tailored interventions available, revealing service gaps for particular groups, such as Aboriginal and Torres Strait Islander men, men from culturally and linguistically diverse communities, men with disabilities and perpetrators with mental illness or substance abuse issues.

We then explore the contested effectiveness of MBCPs, noting the limited evaluation done in this area. While the Commission heard some positive examples of change from those who participated, we also heard of men who demonstrated little to no behaviour change—although concurrent programs designed to support partners received a more positive endorsement.

This chapter also highlights the way in which perpetrator programs remain dislocated from other related services such as those that address mental illness and drug and alcohol misuse. The Commission was painted a picture of a service system under increasing pressure, with dramatically increasing demand for perpetrator programs driven by proactive policing and an increased awareness and understanding of family violence within the community. We heard of lengthy waiting lists and MBCP programs closing their books due to an inability to keep up. We were told of how a lack of timely intervention misses opportunities for change at best, and vindicates perpetrators at worst.

The Commission also heard that regulatory measures to reduce alcohol use, and expanding court-mandated family violence drug and alcohol programs for perpetrators, should be explored as ways to decrease the prevalence and severity of family violence in local communities.

Our way forward involves placing perpetrators in full view. While support services must prioritise the needs of victims of family violence, existing interventions largely leave women to carry the burden of managing the risk associated with the conduct of perpetrators.

There is currently an insufficient breadth and diversity of perpetrator interventions in Victoria. More work is needed to develop a suite of interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, reducing re-offending and meeting the needs of victims. They must also be subject to an effective compliance and oversight scheme. We recommend the creation of a response to perpetration that links all the parts of the government, justice and social services sectors, to overcome the existing fragmented and episodic response to perpetrators, and create a mutually reinforcing web of accountability.

## Discussion of perpetrators elsewhere in this report

Issues relating to perpetrators are discussed throughout the entire report. This section signposts the other chapters in which perpetrators are discussed.

In Chapter 36, we consider initiatives aimed at preventing family violence (particularly men's violence against women) by engaging young boys and men to address outdated perceptions that are associated with masculinity, gender stereotypes and interpersonal relationships and to address social norms and practices supportive of violence against women. In Chapters 29 and 37, we explore efforts to support individuals and communities to be confident in 'calling out' violent and abusive behaviour and attitudes.

Chapter 19 highlights the opportunity that new parenthood presents for health professionals to provide information, develop the skills of fathers and provide alternative notions of masculinity. Improved training for health services including hospitals and general practitioners is explored to enable the health sector to identify and refer perpetrators to suitable services. In that chapter we also consider the extent to which family violence is understood and addressed by the mental health, drug and alcohol sectors.

Chapter 10 also canvasses how positive parenting and healthy relationships with children can act as an incentive for men to address their use of violence, and outlines a number of programs that are targeted at fathers.

The report examines how family violence risks are identified, assessed and acted upon in Chapter 6. This chapter describes the current state of perpetrator risk assessment and management and the way in which inconsistent responses to managing family violence poses a risk that perpetrators will fall out of view and not be held to account.

In Chapters 14, 15 and 16, we consider what happens to perpetrators when they come into contact with the justice system. Chapter 14 describes the role that policing plays in detecting family violence and effectively responding to it. Specifically, it describes police's front-line responsibilities to issue family violence safety notices, apply for family violence intervention orders, investigate and prosecute family violence offences (particularly the enforcement of breaches of orders) and refer perpetrators to MBCPs. Chapter 15 describes the role police have in monitoring particularly high-risk offenders (through the Risk Assessment and Management Panels and other local initiatives) and the ways in which some police divisions are experimenting with pro-arrest policies geared towards securing arrests and remanding offenders.

Chapter 16 details how the conduct of perpetrators is addressed through the courts. In the civil law context, this section describes the effectiveness of family violence intervention orders and the role of legal advice and respondent workers. It also documents the way in which perpetrators can abuse the court process by failing to attend when required, by making unfounded intervention order applications, using delaying tactics or by confronting or intimidating victims at court hearings. The importance of ensuring that perpetrators' interactions with magistrates are meaningful and trigger genuine reflection is emphasised. In the criminal law context, this chapter considers offences for breaches of family violence intervention orders and general offences committed in the context of family violence (such as assaults or threats to kill). It also describes the role that the courts play in monitoring offenders and holding perpetrators to account for failure to comply with orders.

Flowing from this is Chapter 17, which covers criminal offences and sentencing practices for family violence perpetrators. It describes the various sanctions to which perpetrators may be subject, including custodial sentences, community correction orders, fines and adjourned undertakings. This chapter includes analysis of prosecution rates and other sentencing data and examines criticisms that perpetrators are sentenced too leniently and inconsistently. It describes the challenges arising from delays in imposing sanctions and interesting overseas developments for ensuring principles of swift and certain justice are applied to keep perpetrators accountable.

In Chapter 22, we consider the use of restorative justice processes as an option for victims who want to confront the perpetrator directly about their abuse and the harm it has caused. These processes have been described as promoting greater accountability and insight on the part of perpetrators.

In Chapter 13, the Commission provides an overview of the multiple pathways to access perpetrator interventions and examines the interface between these interventions and specialist family violence services for women and children. The Commission heard that specialist family violence services and responses to male perpetrators are not well integrated. In Chapter 13, the Commission recommends area-based integrated intake points for services for women and children and perpetrator programs to improve efficiency, enhance consistency of information, and increase the visibility of the perpetrator by always including perpetrator risk in each step of the intake and assessment process. We call these Support and Safety Hubs.

Chapter 9 considers the conditions necessary for women to stay at home in safety, in particular how technological security devices need to be reinforced with a strong justice response to monitor perpetrators. We also discuss options to facilitate access to housing in circumstances where perpetrators are excluded from the home.

In Chapter 11, we consider how perpetrators can become invisible within the child protection context, with undue focus placed on mothers to take protective steps to ensure the safety of children, rather than Child Protection focusing on the risks an offending father poses to his family.

In Volume V, we examine the different contexts in which family violence can be perpetrated and some of the specific issues that arise in relation to perpetrators in those contexts. In Chapters 23, 27 and 30 we consider adolescents who use family violence, adult children who use violence against older family members and violence in same-sex relationships. In Chapters 26 and 28 we consider issues relevant to perpetrators of family violence in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities.

In Chapter 39, we explore empirical deficiencies that limit our understanding of perpetrators. A lack of robust data sets and difficulties in meaningfully evaluating perpetrator interventions have led to a paucity of evidence to guide our collective response to family violence.

## Context and current practice

### Bringing the perpetrator into view

Historically, public policy responses to family violence have largely focused on addressing the needs of victims, particularly through the establishment and ongoing provision of women's support services.<sup>1</sup> With competing demands on an overburdened family violence system, the allocation of resources to perpetrators of family violence can be controversial<sup>2</sup> as it can be argued that perpetrator intervention programs divert resources from victims' services and detract from accountability through the criminal justice system.<sup>3</sup>

However, perpetrator accountability has become a fundamental element of Victorian family violence policies and has been reflected in legislation,<sup>4</sup> reports,<sup>5</sup> family violence frameworks,<sup>6</sup> action plans<sup>7</sup> and funding commitments.<sup>8</sup>

At a federal level, perpetrator accountability and the importance of men's behaviour change is embedded in the Commonwealth Government's Plan to Reduce Violence Against Women and their Children (the National Plan), released in 2010.<sup>9</sup> Funding was provided for Australia's National Research Organisation for Women's Safety (ANROWS) to conduct research into MBCPs and to develop national outcome standards for program providers.<sup>10</sup> ANROWS has established a Perpetrator Interventions Research Stream to focus on research priorities including system response effectiveness, models to address diversity of perpetrators and interventions for Aboriginal and Torres Strait Islander peoples.<sup>11</sup>

The Commonwealth and state and territory governments have acknowledged the importance of setting standards at a national level in order to achieve consistency in perpetrator responses, and have committed to the recently introduced National Outcome Standards for Perpetrator Interventions (NOSPI), which establish a nationally consistent approach to holding perpetrators of domestic, family and sexual violence to account.<sup>12</sup>

While there has been a shift towards placing perpetrator conduct into view, the case for greater engagement with perpetrators was made by the former Victorian State Coroner Judge Ian Gray in the inquest into the death of Luke Batty, finding: 'This case has dramatically highlighted the need for an emphasis on perpetrator accountability'.<sup>13</sup> Judge Gray commented on the need to address family violence at its source:

The fact is that the perpetrator ultimately controls the risks of family violence. Therefore, it is critical that perpetrators become engaged, or are forced to engage, with the family violence system and the criminal justice system at every possible opportunity to ensure they are not only held to account for their behaviour but also to ensure they receive appropriate treatment, counselling and management to assist them to change that behaviour.<sup>14</sup>

The Commission also heard that measures targeted at holding perpetrators to account and reducing the use and severity of violence make an important contribution to the overall objective of keeping victims safe, with a facilitator of an MBCP telling the Commission during a site visit that participants in such programs are an important resource in keeping women safe in existing and future relationships.<sup>15</sup> The Centre for Innovative Justice also argues that unless there is meaningful engagement with perpetrators, family violence will continue to manifest as an 'ongoing drain on our economic and social wellbeing'.<sup>16</sup>

... while victims of family violence must remain our priority, these victims will also remain at risk unless we step back and widen our gaze.

In other words, until we adjust the lens and bring those who use violence and coercion more clearly into view – until we intervene at the source of the problem – the cycle of this violence will simply roll on.<sup>17</sup>

We also heard that many women want a broad integrated response to family violence that sees a shifting of focus from victims to offenders.<sup>18</sup> The need to move towards a greater emphasis on perpetrator accountability was conveyed in submissions to the Commission:

Interventions must focus on placing the responsibility for change on the perpetrator not the women and children. Users of violence should be removed from the home (when safe to do so) and great focus needs to be placed on holding men accountable for breaches. This might be through the use of CCTV and GPS locaters. We must know that women and children are at greatest risk when they leave the violent relationship so we must provide appropriate support and safety measures.<sup>19</sup>

Perpetrators need to be stood in the witness box to explain what they have done, and they need to take full responsibility for their actions and punished appropriately, not the victims pleading for understanding and having to relive every detail in the public and try to prove our story while the perpetrator sits back and just denies all or blames us for causing it.<sup>20</sup>

## What we know about perpetrators

It is commonly stated that there is no stereotypical perpetrator of family violence. Former Victorian Chief Commissioner of Police and Chair of the Council of Australian Government's Advisory Panel on Reducing Violence against Women and their Children, Mr Ken Lay APM, has stated:

Violence against women is not limited to any suburb, or to the poor, or to any fixed, imagined type of person you have in your head.<sup>21</sup>

Overcoming misinformation and stereotypes associated with family violence has been a key aim for a number of organisations that promote awareness of family violence, with many highlighting its universal nature in factsheets and publications, for example:

Most abusers would appear to be respectable men who are very much in control. They are represented in all occupations and social classes.<sup>22</sup>

People of any class, culture, religion, sexual orientation, marital status and age can be victims or perpetrators of domestic violence.<sup>23</sup>

Although evidence shows that the majority of perpetrators of family violence are male, a recent Australian literature review on domestic violence perpetrators found that currently little is known about the other demographic and individual characteristics of perpetrators of family violence:

While there is a breadth of data on victims of crime, particularly as it relates to sexual assault and domestic violence, there is a critical need for similar investment in data collection on the demographic characteristics of domestic violence and sexual assault perpetrators.<sup>24</sup>

The lack of robust data sets to accurately map the profile of individual perpetrators and track them through the justice and social services system is discussed in more detail in Chapter 39.

While there is relatively scant information on the perpetrator profile in Victoria, it is accepted within international literature that gender inequality is the key driver of violence against women at a societal level.<sup>25</sup> The Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia produced by Our Watch, ANROWS and VicHealth (Victoria Health Promotion Foundation) draws on the position of UN Women and states that the common denominator among perpetrators of intimate partner violence is that they hold attitudes sympathetic to, and supportive of, gender inequality:

When societies, institutions, communities or individuals support or condone violence against women, levels of such violence are higher. Men who hold such beliefs are more likely to perpetrate violence against women, and both women and men who hold such beliefs are less likely to take action to support victims and hold perpetrators to account.<sup>26</sup>

As highlighted above, dominant social norms supporting rigid roles and stereotypes or condoning or excusing violence against women can inform gender-based risk factors at the individual level, by men adopting a masculine orientation and sense of entitlement, believing in rigid and unequal gender roles and forming negative peer associations with other men.<sup>27</sup>

In addition to these gendered factors, there may be other factors that act to reinforce the gendered drivers of violence against women at both a societal and individual level. This can include the condoning of violence in general, experience of and exposure to violence, the weakening of pro-social behaviour (through harmful use of alcohol) and socio-economic inequality or discrimination more generally.<sup>28</sup>

### **Demographic snapshot of respondents and family violence recidivists**

To assist the Commission, the Victorian Crime Statistics Agency (CSA) was commissioned to update the Victorian Family Violence Database and make findings from data collected between 2009–10 and 2013–14.

This data provides a snapshot of perpetrator risk factors and demographics, as recorded by police who attended family violence incidents:

- ▷ 78 per cent of respondents to family violence intervention orders in the Magistrates' Court of Victoria over the five years from 2009–10 to 2013–14 were men.<sup>29</sup>
- ▷ Of the 23,388 male respondents in the Magistrates' Court in 2013–14, 73 per cent were between 20 and 44 years of age, with the largest age group being those between 30 and 34 years of age.<sup>30</sup>
- ▷ In 2013–14, police recorded that 19 per cent of incidents involved perpetrators who were definitely affected by alcohol and 16 per cent of incidents involved perpetrators who were possibly affected by alcohol.<sup>31</sup>
- ▷ In the same time-frame, police recorded that nine per cent of incidents involved perpetrators who were definitely drug-affected and 21 per cent of incidents involved perpetrators who were possibly drug-affected.<sup>32</sup>
- ▷ In 2013–14, the mental health of the perpetrator was recorded as a factor by police in 20 per cent of incidents.<sup>33</sup>
- ▷ In 2013–14, 13 per cent of incidents involved perpetrators who were unemployed.<sup>34</sup>

The CSA also provided analysis regarding recidivist perpetrators gathered from Victoria Police data. Overall, a total of 197,822 unique perpetrators were recorded for at least one family violence incident between 2004 and 2014.<sup>35</sup> The CSA developed a recidivism model based on a subset of 30,695 perpetrators who were recorded for at least one incident in 2010–11, to enable the model to take into account their historical and recidivist family violence behaviour between 2004 and 2014. The final model only included 17,792 perpetrators, due to some required data fields on the L17 form (which police complete for family violence incidents) being missing.<sup>36</sup> As part of this analysis, the CSA identified the following trends:

- ▷ Perpetrators recorded for a recidivism incident are more likely to be male than female and males were 1.53 times more likely to be recorded for a recidivism incident than females.
- ▷ The likelihood of being recorded for a recidivism incident decreases slightly as the age of the perpetrator increases.
- ▷ Perpetrators whose index incident<sup>37</sup> is against a current or former partner are more likely to be recorded for a recidivism incident than those who are violent against another type of family member.
- ▷ The presence of children at the index incident was associated with a higher likelihood of recidivism.
- ▷ Perpetrators were slightly less likely to be recorded for a recidivism incident where recorded criminal offences arose from the index incident.
- ▷ A prior recorded offence for a breach of a family violence order placed a person at a higher likelihood of being recorded for a recidivism incident.
- ▷ Recidivist perpetrators were more likely to have the following risk factors recorded by police at the time of their index incident: perpetrator unemployed, perpetrator depression/mental health issue, and/or perpetrator drug use possible or definite.<sup>38</sup>

The data also suggested that a relatively small number of repeat family violence offenders account for a disproportionate number of family violence incidents recorded by Victoria Police. The 63 per cent ( $n=125,044$ ) of alleged perpetrators who were recorded for only one family violence incident between 2004–05 and 2013–14 accounted for 31 per cent of all family violence incidents, whereas the worst recidivists (recorded for five or more incidents and representing only nine per cent, or 16,914, of all unique perpetrators) accounted for 34 per cent ( $n=136,349$ ) of incidents.<sup>39</sup> It should be noted that recidivist data does not necessarily pinpoint the highest risk offenders. There are a number of factors that may affect how recidivist offenders are identified, including the ability to recognise and report abuse to police (by the victim or others), the visibility of the perpetrator's conduct and the responsiveness of police. Ms Helen Fatouros, Director, Criminal Law Services, Victoria Legal Aid, described high-risk perpetrators broadly falling into two categories:

... the recidivist offender who continues to offend and breach orders and has a significant history of police interaction; and the first time offender who has had minor or no interaction with police, but who goes on to kill or seriously injure their intimate partner or other family member. It is important to remember that high-risk offenders are the minority in the context of family violence offenders.<sup>40</sup>

The CSA noted that:

Statistical analysis to determine whether these perpetrators are significantly different from other perpetrators recorded for family violence could provide useful insights for targeting family violence policy and practice. It could also be instructive to analyse in detail the characteristics and family violence histories of those who perpetrate very serious family violence incidents.<sup>41</sup>

The CSA also made a number of other suggestions for further research in this area by, for example, incorporating Corrections Victoria and courts data to improve statistical modelling, and conducting analysis of the relationships between the perpetrator's family violence incidents and other recorded offences.<sup>42</sup>

### **Demographic snapshot of people charged with breaching intervention orders who receive legal aid**

Victoria Legal Aid collects certain demographic data about its clients, including those who are charged with contravening (breaching) family violence intervention orders. The following statistics examine the demographic characteristics of VLA clients who were charged with breaching FVIOs between 2008 and 2015 and are based on data on a total of 15,522 clients (10,990 who received legal advice and/or a duty lawyer service, and 4532 who received one or more grants of aid).

It should be noted that VLA targets its services to the most vulnerable people and this will affect the overall demographic sample of offenders it assists.<sup>43</sup> It is therefore not possible to extrapolate this data to all perpetrators of family violence.

VLA's research found that clients who had breached an FVIO were overwhelmingly male (approximately 85 per cent) and most likely to be aged between 25–44 years of age. The research found that these clients may have mental illness or a disability (although many clients may not disclose this) and that Aboriginal and Torres Strait Islander people were over-represented.<sup>44</sup>

Further analysis was done on clients who received multiple grants of aid, that is for legal representation, for breaches of FVIOs, which revealed that they were more likely to be male, between 25–44 years of age, have a criminal history, be unemployed and report a disability (most likely an acquired brain injury or psychiatric disability).<sup>45</sup>

## Perpetrators, alcohol and drugs and mental health

The above-mentioned data suggests that for the majority of perpetrators, risk factors associated with substance abuse and mental illness are not present. However, these risk factors are still notable in the context of family violence offending and in the case of mental health issues and drug use, for recidivist offending.

These particular risk factors were also raised extensively in consultations and submissions to the Commission, which is why they are explored in more detail in this chapter, noting that as described above, there are other personal risk factors for perpetrators that reinforce the gendered drivers of family violence, such as exposure to violence or socio-economic inequality.<sup>46</sup>

### Perpetrators and drug and alcohol use

As his addiction to Ice continued over more than five years his behaviour became more dangerous. As he lost his own dignity more and more from his drug abuse, the abuse he subjected the children and [me] to, became worse.<sup>47</sup>

Drug or alcohol use is not the primary cause of family violence. As White Ribbon states in its publication about myths and misconceptions relevant to family violence:

Almost even numbers of sober and drunken people are violent. Where studies do show more drinkers are violent to their partners, the studies are not able to explain why many drunken men (80% of heavy and binge drinkers) did not abuse their wives.<sup>48</sup>

However, the 2013 National Community Attitudes towards Violence Against Women Survey revealed that some in the community believed that alcohol and drug use could excuse or minimise family violence. It revealed that:

- ▷ Nine per cent of those surveyed believed that partner violence can be excused if the perpetrator is heavily affected by alcohol and 19 per cent believed that the woman bears some responsibility if she is raped while affected by alcohol or drugs. Eleven per cent also believed that family violence can be excused if the victim is heavily affected by alcohol.<sup>49</sup>
- ▷ Young people (aged 16–24 years) are more likely than respondents aged 35–64 years to believe that violence could be excused if the perpetrator of rape is heavily affected by alcohol or drugs (10 per cent versus seven per cent) and one in 10 young people agree that family violence can be excused if the offender is affected by alcohol.<sup>50</sup>
- ▷ Young men were more likely to 'blame the victim', with 22 per cent agreeing that women often say 'no' when they mean 'yes', while 21 per cent agree that if a woman is raped while affected by alcohol or drugs, she is at least partly responsible.<sup>51</sup>

The Commission also heard about the perspective of victims from researchers exploring the links between alcohol and drug use and family violence. Ms Ingrid Wilson, a PhD Candidate at La Trobe University, told the Commission:

I asked the women that question [Can alcohol be an excuse?] and they basically said, 'No, he doesn't blame his behaviour on being drunk. He blames me'. So they are the ones who caused him to behave in certain ways, which speaks to obviously the underlying attitudes towards women there. But certainly the women themselves ... 'blame the alcohol' more in terms of the fact that they feel more fearful and more under threat when he's been drinking.<sup>52</sup>

She also described the difficulty some women had in dealing with an alcohol-affected perpetrator and how this increased their fear:

... with the things that women I have interviewed have told me and certainly I explore with them about behaviours, 'Does he do the same behaviours when he is not drunk versus when he is?' Some women will say, 'He does, but it's not as severe. I don't feel as afraid. When we are having arguments, if he is drunk I have to shut down.' You can't engage with someone who has been drinking, whereas when they are having conflict when he's not drinking at least the woman has a voice and is able to at least have some kind of negotiation capacity there. So it just seems to me that from my understanding that alcohol certainly – it makes things worse and women certainly feel more unsafe.<sup>53</sup>

Professor of Social Work at the University of Melbourne, Professor Cathy Humphreys, told the Commission that a combination of drug and alcohol issues and violence-supportive attitudes can exacerbate the severity of physical violence and the psychological harm that occurs.<sup>54</sup> Professor Humphreys has also described the way in which perpetrators can misuse alcohol to justify offending:

... it is not the chemically induced disinhibiting effects of alcohol which are key, but rather the belief that it is disinhibiting and, hence, in many cultures, it allows an individual (particularly men) 'time out' from the normal rules of social responsibility. It thus serves as an excuse for what is normally seen to be unacceptable behaviour, as an external agent (drugs or alcohol) can be blamed, particularly when, within the culture, the substance is perceived to cause the aggression. In this process, perpetrators who wish to be violent can get themselves drunk in order to be violent.<sup>55</sup>

The World Health Organization has noted that harmful use of alcohol and drugs is a commonly cited risk factor for experiencing and perpetrating intimate partner violence and sexual violence.<sup>56</sup> It is recognised as an individual risk factor in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) as it may influence the incidence and severity of violence.<sup>57</sup> While alcohol use is neither necessary nor sufficient for abuse to occur, data suggests that the overall level and severity of partner violence could be reduced if the rates of binge drinking were lowered.<sup>58</sup> The Commission also heard from the Chief Executive Officer of the Victorian Aboriginal Community Controlled Health Organisation, Ms Jill Gallagher AO, who said that:

Substance abuse and mental issues seem to go hand in hand. Reducing drugs and alcohol in our community would reduce a lot of problems around family violence.<sup>59</sup>

However, WHO cautions that evidence for a causal association between harmful use of alcohol and violence is weak.<sup>60</sup> Associate Professor Peter Miller, Principal Research Fellow, School of Psychology, Deakin University, told the Commission that:

... a large body of evidence now exists to suggest that we have reached the point where we should conclude that heavy drinking is a contributing cause of violence. However, important caveats exist. The presence of alcohol is not the only or even the primary determinant of whether violence will occur and alcohol's influence on individuals is not uniform. Instead, alcohol contributes to violence in some people under some circumstances.<sup>61</sup>

The Foundation for Alcohol Research and Education, noting the complex interplay between alcohol misuse and family violence, states:

Alcohol is a contributing factor to FDV [family and domestic violence], increasing both the likelihood of violence occurring and the severity of harms. Alcohol misuse can cause or exacerbate relationship stressors thereby increasing the probability of violence. Alcohol use can be both a consequence to and precursor of relationship stress and violence. Alcohol use also affects cognitive functioning and physical functioning affecting the likelihood of perpetration, and making those who are impacted by FDV more vulnerable. Some perpetrators of violence may try to blame the misuse of alcohol and/or drugs or use intoxication as an excuse. This is not the case. Alcohol use and intoxication are never an excuse for violence.<sup>62</sup>

Research shows that the effect of alcohol on the prevalence of family violence is higher in Aboriginal and Torres Strait Islander communities. From 1 July 1989 to 30 June 2012, seventy per cent of Indigenous homicides were recorded as involving alcohol use by both victims and offenders, as were 43 per cent of homicides involving at least one Indigenous person. In comparison, 22 per cent of non-Indigenous homicides were characterised by alcohol use by both victims and offenders. During this period alcohol use prior to the homicide incident was indicated for Indigenous victims (69 per cent) and offenders (72 per cent) far more frequently than for non-Indigenous victims (27 per cent) and offenders (31 per cent).<sup>63</sup>

Victoria Police collects information about the presence of drugs and alcohol as part of its risk assessment when it attends family violence incidents, recording the presence as either 'definite' or 'possible' on the L17. As with the police incident data on mental illness below, the reliability of this data depends on the ability of police to identify the alleged perpetrator's use of drugs and alcohol.<sup>64</sup>

Victoria Police data in relation to drug and alcohol presentations at family violence call outs over the five years from 2009–10 to 2013–14 shows that there has been growth in definite and possible drug use by alleged perpetrators recorded by police at family violence incidents over the five year period. These risk factors have risen by four and five per cent respectively.<sup>65</sup> Over the same period, the proportion of alleged perpetrators recorded as definitely alcohol-affected fell from 26 to 19 per cent.<sup>66</sup> The proportion of affected family members recorded as definitely affected by alcohol fell by six per cent.<sup>67</sup>

### Perpetrators and mental health

It is important to emphasise that the vast majority of people who have a mental illness are not violent:

Having a mental illness does not mean someone will be violent. People being treated for a mental illness are no more violent or dangerous than the general population. If anything, they are more likely to be the victims of violence, especially self-harm. A small sub-group of people with a mental illness may be more violent than the general population. These are likely to be people who have a history of violent behaviour, who abuse drugs or alcohol and who are not receiving treatment or taking medication as prescribed. Mental illness is associated with only a minuscule proportion of the violence which occurs in society.<sup>68</sup>

However, the Commission heard from victims, and service providers who assist them, regarding their experience of the connection between mental health and the use of violence. Safe Steps advised the Commission that 31 per cent of their family violence clients identified that the perpetrator demonstrated depression or mental health issues.<sup>69</sup> Some victims told the Commission that where the perpetrator had mental health issues, there was a greater risk that they would use violence:

Needless to say this ongoing very odd and ugly controlling behaviour continues to escalate which makes me feel in fear of the safety of my daughter. An undiagnosed mental health illness is a constant risk for our safety but what can be done? ... What can I do to protect my daughter from this man who was once charming but is now paranoid and controlling? My mental health has suffered, my daughter has a high level of anxiety and the family violence just rolls on.<sup>70</sup>

Another victim told the Commission:

I understand that in these situations the police give priority to the safety of women and children, and that is the correct thing to do. My plea is that more attention also be given to the mental health of the perpetrators. My partner was not a bad person ... He was ill and needed psychiatric care. For me, the legacy of domestic violence is magnified by his suicide ... the only opportunity to ever get help for him would have been through the intervention of the police.<sup>71</sup>

The Chief Psychiatrist, Department of Health and Human Services, Dr Mark Oakley Browne, told the Commission that on a population level, mental health problems are a small contributor to violence more generally, with other factors such as gender, a prior history of violence (including being exposed to violence as a child), age and use of substances being more powerful predictors of violence.<sup>72</sup>

However, the Commission notes that the association between mental illness and family violence was reflected in the following:

- ▷ Victorian L17 data illustrates that perpetrator mental health issues have been identified in an increasing proportion of family violence incidents over the past five years where police have been called. In 2013–14, mental health issues were present in one in five incidents attended by police.<sup>73</sup> It should be noted that this data has some limitations because of the limited capacity of police members to identify mental health issues, as well as respondents' varying levels of awareness of their own mental health issues.
- ▷ The Commission was told that a high percentage of Victorian forensic patients (who are people with serious mental illness who have offended or are at a high risk of offending) perpetrate family violence, and that other factors such as 'age, minority status, unemployment, the pressures of parenting, homelessness and the availability (or lack) of support services ... influence when and how family violence might occur'.<sup>74</sup>
- ▷ The CRAF states that murder-suicide outcomes in family violence have been associated with perpetrator depression and other mental health problems.<sup>75</sup>

While there have been some other studies exploring the link between mental illness and family violence,<sup>76</sup> the Commission was told that there is a need for further research into links between antisocial personality disorders (such as psychopathic, narcissitic and borderline personality disorders) and the perpetration of family violence.<sup>77</sup>

## Meaning of perpetrator accountability

The term 'perpetrator accountability' is one of the most oft-used words in family & domestic violence policy circles in Australia.<sup>78</sup>

While achieving perpetrator accountability is a frequently cited goal, this phrase often means different things to different people. A common conceptualisation involves keeping the perpetrator in view and responding appropriately and consistently to their conduct. This can be achieved in a number of ways: through rigorous risk assessment and management, attitudinal and behaviour change interventions or through restrictive and punitive justice system interventions and community condemnation. At a more personal level, it can also be achieved by a perpetrator gaining insight into their conduct and acknowledging its impact on their family.

The wishes of victims of family violence are important in considering how best to hold perpetrators to account. Ms Joanna Fletcher, Chief Executive Officer of Women's Legal Service Victoria, has said that 'slogans and hard justice won't fix the complexity of family violence but listening to the women experiencing it is a good start'.<sup>79</sup>

Victims of family violence have expressed various views on what perpetrator accountability means to them. Among other things, the Commission heard that a key priority for women is to be heard and for the violence to stop:

The women's greatest priority was feeling heard, and wanting behaviour to stop. One woman gave a vivid account of such a turning point; "On that day when you had to stand up and the lady judge said ... she kind of quoted some of his messages or the themes behind his messages and the amount of texts and she said that that is a form of harassment. Do you understand that? When he had to say 'yes' it hit him." From then, she saw a shift in his behaviour because, in her view, the offender had to hear and acknowledge the harm that had been caused.<sup>80</sup>

Accountability has differing meanings for each person, and will require a range of responses. Women most often tell safe steps that they want the violence to stop, not that they want the perpetrator punished. Women may also have particular objectives to hold perpetrators accountable e.g. ensuring their children maintain a relationship with their father while they remain safe.<sup>81</sup>

In 2015, the Loddon Campaspe Community Legal Centre released a report outlining women's experiences of the justice system response to family violence.<sup>82</sup> Women described the importance of the perpetrator acknowledging and apologising for the harm he had caused, and changing his behaviour:

I need him to say I'm sorry. He needs to say it to the kids as well. He never said I'm sorry to any of us, never, and I've asked for him to apologise and he won't.<sup>83</sup>

Victims also thought it was important for the community and justice system to monitor the perpetrator's behaviour and hold him accountable.<sup>84</sup> The women in the research raised the need for improved multi-agency systemic integration in the justice response, family violence prevention and offender accountability programs, including men's behaviour change programs.<sup>85</sup>

According to the LCCLC report, a small number of women supported punishment through imprisonment, as they felt offenders who had harmed them were not capable of rehabilitation and it was the only way of bringing safety to their lives.<sup>86</sup>

The Commission also received a submission indicating that some women wanted to be heard in a less adversarial context through the use of restorative processes, which they believed would potentially initiate a better process of offender acknowledgement and offender behaviour change.<sup>87</sup> We discuss restorative justice options in Chapter 22.

The importance of restoration for victims was also evidenced in a US study conducted with 18 women and four men who had been victims of violent crime, some of whom had been victims of family violence. The focus for these victims was on the harm engendered by the crime and making things as right as possible for the future, rather than violations of the law and avenging the past.<sup>88</sup> While they wished to see the offenders exposed and disgraced, the basis of this desire was to obtain vindication from the community, rather than for the perpetrator to be punished.<sup>89</sup> In general, their safety and the safety of others was their main priority.<sup>90</sup>

Some people consider that perpetrator accountability means a predominantly 'tough on crime' criminal justice response that places responsibility with police to apprehend offenders and the courts to punish offenders through the sentencing regime.<sup>91</sup> One submission told the Commission:

Until a good hard look is taken at the continually weak, inadequate and easy option sentencing of our Magistrates for family violence perpetrators, there will continue to be a distinct lack of deterrent for the perpetrators of such crimes. Affording 1st and 2nd time FV offenders weak dispositions, often without conviction does not send a strong message around specific and general deterrence. To only look at the response of service providers and police, in my opinion, addresses only half the issue. Until our judicial officers are made more accountable for their soft touch, easy option treatment of these criminals, the cycle will continue.<sup>92</sup>

These views are explored in more depth in Chapter 17.

For some, perpetrator accountability requires invoking more than the criminal justice system. Mr Lay has noted the limitations of a justice-only approach to perpetrators, stating that there needs to be a far greater focus on preventative measures, 'rather than trying to arrest our way out of it'.<sup>93</sup> According to its submission to the Commission, Victoria Police considers that perpetrator accountability systems need to recognise the power and gender inequality that underpins family violence, refrain from victim blaming, prevent family violence from re-occurring and escalating, and ensure that justice responses are swift, proportionate, flexible and safety focused.<sup>94</sup>

The Centre for Innovative Justice also notes that:

A 'lock 'em up and throw away the key' approach may seem like accountability but, ultimately, abdicates our collective responsibility to address the violence. It also abdicates our responsibility to acknowledge that family violence is not something committed by an aberrant fraction of the population who can be pushed conveniently out of sight, but by a wide range of individuals ...<sup>95</sup>

The Centre for Innovative Justice has also commented that the 'the revolving door and criminogenic nature of imprisonment is viewed by many as likely to make tendencies towards violence worse,' and that prisons are not places where men learn to respect women.<sup>96</sup> The Law Institute of Victoria submitted that, while it is important to hold perpetrators to account, a punitive focus can be dangerous and counter-productive.<sup>97</sup> Ms Joanna Fletcher explains that, according to the Sentencing Advisory Council, the cumulative re-offending rate is likely to be higher when the sentence is imprisonment, and states:

The single most consistent theme in what women say they want is simple: they want the violence to stop. Prison may offer a brief hiatus from the violence but it doesn't stop it.<sup>98</sup>

This was echoed during the Commission's hearings, where one victim of family violence told us:

He told me he loved prison and met similar minded men and had a great time. So it's obvious that it didn't change his behaviour at all because he kept breaching the order. As soon as he gets out of prison, he's back to it. When you think about how our lives – we are living in a virtual prison and he is free to breach the order as much as he wants and he said, "I will keep coming to the house because I can," and that's the way he thinks, and he can. Nothing stops him.<sup>99</sup>

In its submission to the Commission, the Victorian Government stated that perpetrator accountability strategies are those that seek to hold perpetrators to account for their behaviour and prevent re-offending, including through the implementation of legal justice system responses, as well as behavioural change counselling or other initiatives.<sup>100</sup> Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division, Department of Justice and Regulation, emphasised that while the criminal justice system can hold perpetrators to account publicly and recognise the harm done to victims, criminal law responses are just one part of what needs to be an integrated and holistic response to family violence.<sup>101</sup>

The National Plan to Address Violence against Women and their Children 2010–2022 also states that focusing on punitive measures alone risks diverting attention from creating accountability for the true causal factors that drive offending behaviour and, therefore, will not bring about men's behavioural change.<sup>102</sup>

## Web of accountability

A more collective and collaborative approach known as the 'web of accountability' has been advocated by academics, No To Violence and the Centre for Innovative Justice. No To Violence and the Men's Referral Service argue that: 'perpetrator accountability systems are strongest when formal and informal accountability processes work together to form a web of accountability around the man'.<sup>103</sup> As they note:

Family violence will not end until friends, family members and community support networks and structures develop the skills to both support and advocate for victims, and scaffold/ support perpetrators towards journeys of accountability and nonviolence.<sup>104</sup>

No To Violence and Men's Referral Service describe the potential components of the web of accountability around a man as including attempts to hold him accountable through formal criminal justice, civil justice and child protection systems, the actions of non-mandated service systems that attempt to engage him through proactive, assertive outreach, and informal attempts by women and the community to hold him accountable.<sup>105</sup> They submit that perpetrator accountability requires family violence service systems to be accountable to each other, women and children, and to have defined and transparent roles and responsibilities.<sup>106</sup> However, they submit that while service systems can punish perpetrators, and attempt to mandate, scaffold and hold men in intervention contexts that might lead to them behaving in ways that are more accountable, they cannot force accountability given that:

Genuine accountability requires the operationalisation of what accountability means for that specific perpetrator, based ... on what those affected by his violence need to see change about his specific patterns of coercive control.<sup>107</sup>

The Centre for Innovative Justice has also called for an integrated approach and for the system to work together, to keep perpetrators in full view:

... perpetrator accountability is about all parts of the system working together. It is not about excluding, or excusing, violent and controlling men. It is not simply about locking people up, and certainly not about letting them off the hook.

First and foremost, accountability means making victims of family violence safe. It means keeping the perpetrator firmly in view, not isolating him or propelling him from scrutiny. It means leveraging the authority of the justice system and whatever stake in conformity the perpetrator has to ensure that he complies with the law. It means measuring the right things. It means keeping not only the violence and its user visible but also the system's response. It means every part of the system bearing responsibility and the victim setting the pace. Just as importantly, it means coming to terms with the fact that family violence is core business in the legal system and has to be treated – and funded – as such.

At its simplest, perpetrator accountability is about widening our gaze to include individuals who use family violence – bringing them squarely into the spotlight; making them responsible for their own behaviour, certainly; but all of us [are] accountable for how the community steps up to meet it.<sup>108</sup>

The National Outcome Standards for Perpetrator Interventions are premised on the notion that to achieve the best results, the various parts of the perpetrator accountability system need to work together, including the police, courts, corrections, perpetrators and offender programs.<sup>109</sup> We heard that the current environment is problematic, as it allows perpetrators to effectively opt out of the system.<sup>110</sup> In its submission, Good Shepherd Australia New Zealand emphasised that perpetrator accountability needs to be grounded in the service system's efforts to work towards the safety and wellbeing of women and children. It noted that the current service system rarely engages men and does not have the capacity to provide men with a long-term strategy to stop the violence.<sup>111</sup>

Commentators also suggest that a combined response would help to reduce the burden placed on victims of family violence. The Centre for Innovative Justice has emphasised the importance of placing this burden squarely on the system, noting that a combined justice and community response approach that 'is more powerful than the man's power in the relationship' is required to address family violence.<sup>112</sup> No To Violence noted that while women and children, and the services that support them, perform a central role in this web, it is not the responsibility of women and children to hold men accountable. Accountability is strongest when women's existing efforts to hold men accountable are supported by formal accountability measures.<sup>113</sup>

## Different approaches to changing perpetrators' behaviour

This section explores the most common approaches to changing perpetrators' behaviour and breaking the cycle of family violence. The Duluth model, a gender-driven psychoeducational approach, has been the dominant model for informing behaviour change initiatives in the community by facilitating men's awareness and understanding of the gendered nature of their conduct and its harmful impact. The model relies on being part of a broader coordinated justice and service system approach and is premised on the view that family/domestic violence is a result of 'socio-political factors, such as entrenched gender inequality and patriarchal ideology'.<sup>114</sup>

In contrast, matched interventions such as the Risk Needs Responsivity model, tend to view family violence offending as a manifestation of 'personal dysfunction'<sup>115</sup> and seek to identify and address specific criminogenic risk factors that contribute to, or exacerbate, offending. These are risk factors relating to the offender's psychological, social and emotional functioning that are linked to the continuation of their criminal behaviour. Examples include substance abuse and unemployment.<sup>116</sup> These interventions have been the primary vehicle for behaviour change for a range of offending in the criminal justice setting. These models are discussed in more detail below.

The strengths and applicability of these distinct models to respond to perpetrators has, at times, been a matter of contention between experts in the family violence field.

The conceptualisation of domestic and sexual violence as behaviour caused by psychological dysfunction or other individual or socio-demographic characteristics, for example, removes the responsibility of violence from the perpetrator, and tends to support a psychotherapeutic approach to intervention. Understanding domestic and sexual violence as the result of social constructions about masculinity, gender identities and power relations, on the other hand, supports a gendered and educational approach to intervention, and points to the need to address social structures that reinforce men's violence against women.<sup>117</sup>

This tension has flowed more broadly into public discourse, with some media commentators encouraging this Commission to grapple with the tension found in this spectrum of views.<sup>118</sup> Commentators have debated the extent to which gender and other factors should be addressed in interventions to address family violence and highlighted concerns that attributing violent behaviour to a perpetrator's use of alcohol or mental illness, may act to excuse, justify and normalise family violence. A media commentator described this as reflecting 'a very old and very common anxiety—that the attempt to explain violence leads inexorably to its exculpation'.<sup>119</sup>

While these two approaches are distinct and point to limitations in the other, the Commission learnt that ultimately, there is broad agreement on the desirability of combining the best aspects of both interventions. This is discussed further in the following section.

## Duluth model of behaviour change

Addressing gender inequality to reduce family violence is at the heart of the psycho-educational Duluth model, described as 'the most enduring and prominent model of perpetrator intervention in existence today'.<sup>120</sup> It emerged in the 1980s in a small community in Minnesota in the United States and has been highly influential in the development of MBCPs in Victoria. The model informs programs that are typically delivered in group settings 'where vignettes, discussions and role playing are utilised to generate dialogue and encourage critical thinking about power relationships that underpin men's violent and dominant behaviour'.<sup>121</sup>

The application of this model in Victorian programs was described to the Commission as follows:

... the psycho-educational approach is a combination of looking at his beliefs and attitudes which is related to his use of violence and his offending; a series of topics that helps him to realise that his violence is about power and control and that he is sabotaging what he wants for his life by trying to dominate; helping him to realise where he gets that from in our society.<sup>122</sup>

Proponents of gender-based interventions generally acknowledge that the life experiences of perpetrators (such as childhood exposure to violence or substance misuse) have been shown to increase the likelihood of violence against women; however, they argue these factors only come into play when a perpetrator has low support for gender equality and adheres to rigid gender roles and stereotypes.<sup>123</sup> In this context, UN Women acknowledged that other risk factors are influential, but 'need to be addressed as they intersect or interact with unequal gender relations'.<sup>124</sup>

In explaining gender inequality as the foundation of violence against women, many point out that perpetrators have diverse backgrounds and experiences (for example, different levels of education, employment status, and mental health status), such that not one of those characteristics can explain the coercive and controlling behaviour that constitutes family violence:

Historically, many attempts to understand violence against women have sought simplistic or single-factor causes for individual men's violence. Such explanations point to the psychology or mental health of the perpetrator, his life experiences (such as childhood exposure to violence), behaviour (such as alcohol use) or personal circumstances (such as unemployment). While such individual level factors may well be relevant, we need to explain why most men to whom they apply are not violent, and why other men not exposed to any of these factors are violent. We also need to explain why such factors seem relevant in some cases, contexts or countries, but not others.<sup>125</sup>

The vast majority of violent men are not suffering from mental illness and could not be described as psychopaths.<sup>126</sup>

It has also been noted that some risk factors, such as poverty, affect both men and women, yet the prevalence of violence remains gendered.<sup>127</sup>

There has also been caution around acknowledging individual risk factors in offending behaviour, as it may be seen as minimising or excusing offending. A literature review on this issue noted:

The conceptualisation of domestic and sexual violence as behaviour caused by psychological dysfunction or other individual or socio-demographic characteristics, for example, removes the responsibility of violence from the perpetrator ...<sup>128</sup>

The Duluth model (and in turn, the Victorian programs that it informs) has been criticised as representing a 'one-size-fits-all' approach that fails to recognise the complexities of family violence offending<sup>129</sup> or the broad range of circumstances in which it can manifest.<sup>130</sup>

In addition, some considered that these programs are only suitable for men who have 'for want of a better term, a general pro-social demeanour' and are therefore amenable to change in a relatively short period of time.<sup>131</sup> The Commission heard that the Duluth model can have limitations in facilitating meaningful behavioural change as it requires men to accept the reality of gender inequality in order to be effective.

One of the problems is when you intervene with attitudes and beliefs that support family violence with people that don't subscribe to those attitudes or beliefs or don't feel they need to, so they often resist intervention, they don't see intervention as relevant to their needs, and the task of the facilitator of the program is to persuade them that they hold these beliefs that they don't recognise in themselves.<sup>132</sup>

No To Violence also acknowledged that MBCPs cannot be the sole community-based intervention to address men's offending, noting that many men are not suited to a group engagement environment and individual one-on-one counselling is often required.<sup>133</sup>

### **Risk Needs Responsivity model**

In its joint submission to the Commission, the Centre for Forensic Behavioural Science and Forensicare contended that existing family violence policy is influenced by 'the predominance in both academic and social service settings of explanatory theories that singularly attribute male perpetration of family violence against women and children to a gendered sense of entitlement, power and control'.<sup>134</sup> They argue this approach does not account for the role of individual psychosocial factors such as mental health, substance misuse, personality, neurobiology, emotion, stress, and dysfunctional relationships, nor does it account for violence used by women or violence in LGBTI relationships.<sup>135</sup>

The Commission was pointed to some evidence of the applicability of some general correctional programs to the family violence context, given that many perpetrators of family violence have other criminal convictions.<sup>136</sup> Some cited the need for greater reliance on the evidence base for broader criminal offending to make interventions more sophisticated, noting that a purely psycho-social model is at odds with the way other types of criminal behaviours are addressed.

In most other areas of offender rehabilitation, psychological theories of offending, offender typologies, risk assessment protocols, and best-practice intervention pathways are well-established in the international literature and integrated into the Victorian criminal justice system ...

By contrast, there is almost no reference to the principles of evidence-based practice in offender assessment and rehabilitation in the international literature or practice settings for family violence ...<sup>137</sup>

This was highlighted in a recent literature review, which contrasted the different approaches adopted for sex offender programs, which 'adopt a cognitive behavioural approach and have rigorous assessment and screening tools to determine a perpetrator's risk and motivation'.<sup>138</sup> The review highlighted that there is greater debate in the family violence sector on best approaches to perpetrator programs, compared to the sexual assault field.<sup>139</sup>

The Risk Needs Responsivity approach was held up as a more sophisticated alternative to addressing family violence,<sup>140</sup> noting the success of programs using the model in reducing recidivism in sexual offenders.<sup>141</sup>

In broad terms, the Risk Needs Responsivity model can be described as:

- ▷ ensuring that the intensity of intervention is matched to the complexity and risk of an individual (risk)
- ▷ addressing the specific factors that contribute to offending behaviour (needs)
- ▷ matching the treatment to the individual's needs (responsivity).<sup>142</sup>

A literature review described it in the following way:

The *risk* principle refers to the match between the intensity of treatment to the risk level of the offender, and points to the use of valid assessment tools. Based on the *need* principle, effective ... treatment programs should address offender's psychological, social and emotional functioning linked to the development and continuation of criminal behaviour (i.e. criminogenic needs such as attitudes supportive of crime, delinquent peers, substance abuse, unemployment). The *responsivity* principle postulates that effective treatment should be cognitive behavioural in nature (general responsivity) and tailored to the learning style, cognitive capabilities, motivations, personality and cultural background of the offender (specific responsivity).<sup>143</sup>

Some witnesses drew the Commission's attention to the growing use of RNR programs to inform the development of custodial programs for family offenders:

There has been a lot of work done, for example, in Corrections Victoria recently developing intensive family violence programs and moderate family violence programs based on those principles. I think that's very, very positive because experience from overseas shows that they can be highly effective.<sup>144</sup>

Other commentators endorse the Good Lives Model, initially developed for the treatment of sex offenders; a strengths-based approach to offender rehabilitation which focuses on individuals' strengths and goals rather than primarily on their deficits.<sup>145</sup> It has been suggested that, together with gender-based approaches, it might be an appropriate framework for use in the context of family violence perpetrator programs.<sup>146</sup> It has been noted that the GLM is often perceived as an enhancement to (rather than distinct from) Risk Needs Responsivity—with Risk Needs Responsivity reducing and managing risk and the GLM informing positive goal-setting.<sup>147</sup>

In addition, some commentators consider that categorising family violence offenders by personality characteristics alongside the type, frequency and severity of their violence would be beneficial as it could help ensure perpetrators are matched to treatment services that target their underlying behaviour.<sup>148</sup> The Commission was told that further work needs to be done before such categories can be used in practice-based decision-making processes.<sup>149</sup>

### **A combined approach to intervention**

Despite the perception that these different viewpoints are in opposition, there has been recognition of the value of combining approaches that address gender attitudes with those that address personal factors that contribute to, or exacerbate, family violence offending.

... it is reasonable to suggest that expertise and understanding have developed sufficiently for a more flexible approach to be taken – for a gendered analysis of family violence to remain central, but supported by measures which increase the capacity of perpetrators to engage with a program, comply with orders, and to assume responsibility for their violence in some way.<sup>150</sup>

Professor Andrew Day, registered psychologist and Professor of Psychology at Deakin University also highlighted the need to recognise societal factors (including cultural norms) in addressing offending:

I would say, yes, family violence is a socially and culturally constructed problem, and we need to attend to that during the intervention. So it's very important that we don't just pathologise the problem within the individual and our treatment approaches, but we contextualise it within the family, social and community environments in which they grew up and in which violence occurs.<sup>151</sup>

This recognition is informing the collective thinking on how to design MBCPs. It has been observed that the Risk Needs Responsivity model could, for example, be applied to the Duluth model to better target interventions.<sup>152</sup> As noted by Hall McMaster and Associates who designed the 'Changeabout' program for Corrections Victoria 'in reality, these two major approaches have been blended to varying degrees and so, in the practice of FV [family violence] intervention, there is often no clear distinction between the models'.<sup>153</sup>

Professor Day confirmed this for the Commission:

Debates about program design and content are often characterised in terms of the differences that exist between sociological (including feminist) and psychological explanations of family violence. However, in practice many contemporary programs draw on elements of both of these theories, reflecting a common view about the nature of the problem as generated within a context of gender relations, socialisation and learning, and an orientation to intervention that focuses on changing behaviour and ways of thinking about interpersonal relationships.<sup>154</sup>

This position was also echoed by Mr Rodney Vlasis, registered psychologist and Manager of the Men's Referral Service:

We can have a feminist approach, but still apply RNR principles and we believe that programs need the capacity, not to have a different type of program, but to overlay what they are already doing ... with a capacity to be able to have an individualised tailored approach and to address some of these other issues, but that doesn't necessarily mean abandoning a gendered based approach to the work. They can act together in a really comprehensive, integrated approach.<sup>155</sup>

Indeed, the family violence sector relies on risk assessment tools (for example, through the CRAF) that direct attention to a perpetrator's individual characteristics to help inform an assessment of whether a victim is at an increased risk of being killed or almost killed. This relies on consideration of individual indicators including drug or alcohol misuse, unemployment, prior threats of suicide or recent separation. Other factors such as use of or access to weapons, attempts to choke the victim, stalking, sexual assault, threats to harm or kill children and escalation of violence are other indicators for lethality.<sup>156</sup>

The Commission heard that proponents of the adoption of the Risk Needs Responsivity model to address family violence acknowledge the significance of gender and its central role in furthering understanding and awareness of family violence:

The reality is, if it were not for this gender perspective of family violence, the sector would not be where it is today. We must not lose any ground that has been gained; however, we suffer from not being up to date and considering the broader array of family violence ... While there are some men for whom outdated gender attitudes are the sole cause of their violence, it is simply not the case for many.<sup>157</sup>

A multi-level approach that focuses both on interventions at the program level and the broader societal level to address socio-structural factors, such as gender power relations, is more likely to result in longer term outcomes.<sup>158</sup> In addition, interventions that incorporate individual factors as well as psychosocial factors such as poverty, support, housing, social norms, and cultural participation 'tend to fare better in terms of effectiveness and efficacy than interventions that use only one of these approaches'.<sup>159</sup>

A recent literature review concluded that there are relatively few programs adopting a 'purely psycho-educational or CBT-based perpetrator intervention', noting:

Indeed, many or even most applications of CBT in the family/domestic violence perpetrator intervention field occur within some sort of gender-based power and control framework that, while is not exactly a Duluth approach ... perceives family/domestic violence as a social rather than purely psychotherapeutic phenomena.<sup>160</sup>

Interestingly, despite the heavily contested theoretical underpinnings of these two traditions, the efficacy of both in regards to intimate partner violence perpetrators appears to be broadly similar. According to Banks, Kini and Babcock: 'the empirical research finds that both models have an almost equal, small impact on stopping subsequent intimate partner violence'.<sup>161</sup> Hall McMaster and Associates were more positive about prospects for success.

Although FV is a major social problem, there have been few rigorous outcome evaluations undertaken. What has emerged, suggests that FV programs – whether based on the Duluth or CBT model (or some combination of these) – have a small, positive impact on reoffending. There seems to be no solid evidence to date which would provide confidence that either model should be favoured over the other. However, the research evidence does provide optimism that FV programs can work where men complete the full intervention.<sup>162</sup>

Despite this, MBCPs have been justified on the basis that some intervention is better than none:

The rationale for intervening with known perpetrators is based on the understanding that repeat offending is relatively common and that interventions that are even modestly successful in preventing further violence will, therefore, make a significant contribution.

There is also evidence that alternatives, such as imprisonment, do little to deter criminal behaviour; that longer sentences are not associated with reduced offending; and, more generally, that punishment-based responses are an ineffective way of changing behaviour (unless some very specific conditions are in place).

It follows that policies and programs that focus on addressing the causes of family violence in known perpetrators and equipping them with the motivation, problem awareness, and skills that are needed for them to act in ways that do not involve violence will have a much greater chance of success.<sup>163</sup>

## Men's behaviour change programs

Developing responses to perpetrators of family violence beyond criminal sanctions is a recent and underdeveloped policy area. For the most part, it has been limited to men's behaviour change programs, which began in the 1980s based on international models and have developed in an ad hoc way since that time.<sup>164</sup> As noted above, most MBCPs in Victoria draw heavily on the Duluth model and are typically 12-week group-based programs,<sup>165</sup> which focus on the perpetrator recognising their violence and developing strategies to stop.

MBCPs are sometimes confused with anger management courses. It is broadly accepted that anger is not generally the primary cause of men's family violence offending and is regarded as 'ineffective and unsuitable' as a sole intervention.<sup>166</sup> Ms De Cicco made the distinction between the two:

Unlike anger management programs MBCPs address the underlying causes of family violence by looking at control and power more broadly than just their manifestation in anger-related behaviours.<sup>167</sup>

MBCPs are also different from couples therapy, family therapy or court-ordered relationship counselling provided through family and relationship services.<sup>168</sup>

While the overarching goal of MBCPs is to effect long-term behaviour change, No To Violence highlights that it also has broader benefits—including risk management—by ensuring the family remains in the view of service providers. These benefits are described as follows:

Contributions to ongoing risk assessment and risk management, monitoring, partner support and advocacy, consideration of children's needs, and strengthening the capacity of perpetrator interventions and accountability processes initiated by other systems agencies all make investments in these programs worthwhile.<sup>169</sup>

## Minimum standards for men's behavioural change programs

No To Violence is the Victorian peak body working with men to end their violence and abuse against family members in Victoria. No To Violence has set minimum standards, as well as good practice guidelines for use by providers of MBCPs.<sup>170</sup> No To Violence also published a manual in 2005 which is intended to provide guidance and support for providers of MBCPs.<sup>171</sup> While MBCPs are not subject to formal accreditation, providers receiving state government funding must be members of No To Violence and comply with the minimum standards.<sup>172</sup> The Commission understands that most, but not all, MBCPs receive funding from DHHS.<sup>173</sup>

The minimum standards cover a range of matters including operational requirements (include staff roles and qualifications), eligibility criteria, information sharing, program duration and processes for engaging with families and other service providers.

The minimum standards state that MBCPs need to be co-facilitated by at least two professionals and No To Violence requires that there be one male and one female co-facilitator, unless there are exceptional circumstances.<sup>174</sup>

The minimum standards set out core messages that participating men must understand and accept and also a set of skills that men must develop if they are to change their behaviour.<sup>175</sup> The skills that men should acquire throughout an MBCP include the ability to recognise the effects of their behaviour, be open to feedback from women and children, respond to strong emotions appropriately and prioritise positive personal relationships that support their choice to not engage in violent or controlling behaviour.

There is no requirement in the No To Violence minimum standards for the provision of individual sessions in addition to group-work. However, the manual recognises that individual sessions can complement group work: 'individual counselling needs to be available for men, and ... they should be encouraged to use it when they need to'.<sup>176</sup>

## Pathways into men's behaviour change programs

Referral for voluntary participation can be through self-referral by men, their family members or friends independently approaching a provider directly, or through the Men's Referral Service (MRS) described below.

One man who gave evidence to the Commission approached a program at the encouragement of his partner. He noted:

Before I started [the MBCP], I had decided I was going to do something about myself and my behaviour. I didn't want to lose everything I had. I went in there the first day with the intention of being honest and open with what my experiences were and what I saw myself as being.<sup>177</sup>

Third parties, such as police, Child Protection or health services can also refer offenders to programs. For example, Victoria Police is required to complete a Family Violence Risk Assessment and Management Report (commonly referred to as an 'L17 referral') in response to all reports of family violence or inter-familial sexual offences.<sup>178</sup> In 2013–14, Victoria Police made 43,578 formal L17 referrals involving perpetrators.<sup>179</sup> In addition, it made 9031 informal referrals, where perpetrators were provided with information and recommended to make contact with a program themselves.<sup>180</sup>

As a result of the increasing difficulties faced by agencies that fund MBCPs face in dealing with the volume of police referrals, the then Department of Human Services provided funding for the Enhanced Services Intake (ESI) initiative. Built on the existing intake services for MBCPs, the initiative was designed to increase the number of men engaging with MBCPs. The Men's Referral Service (After Hours) provides an ESI response to weekend L17 referrals. The Commission heard that this service responds to over 13,000 police reports annually from across Victoria and that telephone referral workers 'cold call' men assessed by police to be perpetrators of family violence.<sup>181</sup> Under the auspices of No To Violence, MRS (After Hours) also offers information and advice to men who are excluded from the family home on the basis that this may engage men in considering changing their behaviour and contribute to increased rates of court attendance.<sup>182</sup>

Perpetrators may also be mandated to participate in MBCPs as part of a court order. This can happen in the following ways:

- ▷ In four magistrates' courts in Victoria, magistrates may compel attendance at an MBCP through what is known as a counselling order, when making a civil family violence intervention order.<sup>183</sup>
- ▷ Other magistrates' courts without this power also make referrals to an MBCP—some informally, by encouraging men to attend and others as a condition of a family violence intervention order.<sup>184</sup>
- ▷ In criminal matters, perpetrators may be required to attend as a condition of a community correction order when they have been found guilty of a criminal offence relating to a family violence incident.<sup>185</sup>
- ▷ Participation in an MBCP may be a condition of parole.<sup>186</sup>

The Family Violence Court Intervention Program operates alongside the Family Violence Court Division in the Magistrates' Courts sitting at Ballarat and Heidelberg, and was established to support the counselling orders scheme and to ensure that men are directed to undertake an MBCP, as well as to provide support programs and services for affected family members.<sup>187</sup> At the Magistrates' Courts sitting at Frankston and Moorabbin, men can be directed to attend an eligibility assessment interview through the Family Violence Counselling Orders Program. If the respondent is assessed as eligible, these courts will make a counselling order. The FVCOP was established to support the expansion of mandated MBCPs.<sup>188</sup> Respondent support workers are assigned to these courts.<sup>189</sup> As outlined in Table 18.1, their role includes overseeing mandated MBCPs.<sup>190</sup>

As noted above, Corrections Victoria also intends to offer MBCPs for both sentenced and remanded prisoners in custody.<sup>191</sup>

An overview of the ways in which a person can be mandated to participate in programs, and the related sanctions and oversight in place to enforce that participation, is provided in Table 18.1.

Table 18.1 Court powers to order attendance at men’s behaviour change programs

Mechanism	Availability	Sanction	Oversight
Family violence intervention order	<p>The Magistrates’ Court of Victoria (MCV) does not have an express universal power to compel a respondent in an intervention order proceeding to attend an MBCP.</p> <p>Under the <i>Family Violence Protection Act 2008</i> (Vic) (FVPA), the MCV can make a Family Violence Intervention Order (FVIO). The court can include in an FVIO any condition that appears necessary or desirable in the circumstances.<sup>192</sup></p> <p>On this basis, the MCV does make FVIO orders that include a condition that a perpetrator contact, or even attend, an MBCP.</p>	<p>If a respondent contravenes an FVIO, they are liable to Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.<sup>193</sup></p> <p>There are also penalties for persistent contraventions of an FVIO, for which a respondent is liable to Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.<sup>194</sup></p>	<p>Subject to the terms of the particular FVIO, it is likely that judicial oversight of compliance with any such condition will only arise if:</p> <ul style="list-style-type: none"> <li>▷ there is enforcement action for contravention of the order; and/or</li> <li>▷ a relevant party (including the respondent) applies to vary or revoke the FVIO.<sup>195</sup></li> </ul>
Counselling order	<p>Under Part 5 of the FVPA, the Family Violence Court Division of the MCV and the MCV sitting at Frankston and Moorabbin have the power to make counselling orders, requiring respondents who lived in certain catchment areas at the time the family violence was perpetrated<sup>196</sup> to attend counselling to increase their accountability for the use of violence and encourage change to their behaviour.<sup>197</sup> In these circumstances, the MCV can compel a respondent to attend an MBCP.</p> <p>In general, before making a counselling order, the court must order:</p> <ol style="list-style-type: none"> <li>(i) a report from a person approved by the Secretary of the Department of Justice and Regulation as to whether the respondent is eligible to attend counselling (Report Writer); and</li> <li>(ii) the respondent to attend an interview with the Report Writer.<sup>198</sup></li> </ol> <p>The report must assess the respondent as eligible to attend counselling unless the respondent does not have the ability or capacity to participate in counselling, for example, because of any alcohol or drug problems, disabilities or language skills.<sup>199</sup></p> <p>Once such a report is received, the court must convene a hearing to determine whether to make a Counselling Order.</p>	<p>If the respondent fails to attend an interview with the Report Writer, they are guilty of an offence and liable to a penalty (not exceeding 10 penalty units).<sup>200</sup></p> <p>If the court makes a Counselling Order and the respondent fails to attend counselling, again they are guilty of an offence and liable to a penalty (not exceeding 10 penalty units).<sup>201</sup> However, the respondent is only liable to be prosecuted once for the offence of failing to attend the counselling (regardless of how many sessions they fail to attend).<sup>202</sup></p>	<p>Where a respondent fails to attend an interview with the Report Writer or fails to attend counselling, the Report Writer or provider of the counselling may give the court a certificate that sets out the details of the respondent’s failure to attend.<sup>203</sup> This may result in a police investigation.</p> <p>The FVCIP and the FVCOP both have mechanisms in place to monitor and follow up with men who fail to attend a required step of an MBCP. If the respondent does not provide a reasonable excuse for non-attendance, the respondent support worker will complete a certificate of non-attendance and this will be reported to the police. The court will not make any further attempts to follow up with or contact the respondent.<sup>204</sup></p> <p>Respondent support workers are also notified when the respondent has completed the program.<sup>205</sup></p> <p>Again, subject to the terms of the particular Counselling Order, it is likely that judicial oversight of compliance with any such order will arise if:</p> <ul style="list-style-type: none"> <li>▷ there is enforcement action for failure to comply with the order; and/or</li> <li>▷ a relevant party (including the respondent) applies to vary or revoke the order.<sup>206</sup></li> </ul>

Mechanism	Availability	Sanction	Oversight
Community Correction Order	<p>Under Part 3A of the <i>Sentencing Act 1991</i> (Vic), a court may make a community correction order (CCO) if an offender has been convicted of an offence punishable by more than 5 penalty units, has received a pre-sentence report (if required) and the offender consents to the order.<sup>207</sup></p> <p>The MCV may make a CCO for a period of up to 2 years (for 1 offence), 4 years (for 2 offences) or 5 years (for 3 or more offences). The County and Supreme Courts also have powers to make a CCO for the maximum term of imprisonment for the offence or two years, whichever is greater.<sup>208</sup></p> <p>A court may also determine that one or more conditions must be met within an intensive compliance period.<sup>209</sup></p> <p>A CCO may include a treatment and rehabilitation condition requiring the offender to undergo the specified treatment and rehabilitation, which includes a program that addresses factors related to the offending behaviour.<sup>210</sup> In this way, the court can compel the offender to attend an MBCP.</p>	<p>If an offender contravenes a CCO without a reasonable excuse, they are liable to 3 months imprisonment.<sup>211</sup></p>	<p>A CCO condition might expressly provide for judicial monitoring, requiring the court to review the compliance of the offender during the course of the order.<sup>212</sup> Such a condition might require the offender to re-appear before the court at specified times as well as provide certain information during the course of the review.<sup>213</sup> Where the offender re-appears for such review, the court may vary or cancel the condition, as well as give further directions for future reviews.<sup>214</sup></p> <p>If the offender fails to re-appear for such review, the court may issue a warrant to arrest the offender.<sup>215</sup></p> <p>A CCO condition might also expressly provide for the offender to be supervised, monitored and managed by the Secretary to the Department of Justice and Regulation, to ensure the offender complies with the CCO.<sup>216</sup></p> <p>As with an FVIO or a Counselling order, a relevant person (including the offender)<sup>217</sup> may also apply to vary or otherwise deal with a CCO, with the court making such a decision on the basis of its assessment of the extent to which the offender has complied with the CCO.<sup>218</sup></p>

### Existing men's behaviour change programs

As at July 2015, there were 35 MBCPs in Victoria, provided by approximately 28 organisations.<sup>219</sup>

Program providers are community based organisations which may be local health services, family services, counselling and other agencies.<sup>220</sup>

Perpetrators are required to participate in an interview conducted by an appropriately qualified men's family violence worker to assess their eligibility for an MBCP.<sup>221</sup> The standards state that 'any potential barriers to the man's participation are ... assessed and managed appropriately'.<sup>222</sup> In the context of court-mandated MBCPs, a respondent is generally considered to be eligible unless they do not have the ability to participate due to factors including: language skills, disabilities, severe psychiatric or psychological conditions or alcohol and drug problems.<sup>223</sup>

Accommodating perpetrators with other complex issues in mainstream MBCPs may lead to some men not identifying with their fellow participants. As one partner of a perpetrator told the Commission:

My partner participated in an MBCP but he was in there with men who were alcoholic, homeless – he compared himself to them and saw himself as not needing the program as much as they did.<sup>224</sup>

No To Violence told the Commission that men with mental health concerns or drug and alcohol problems will not be automatically screened out, as these matters can be addressed in parallel, unless it precludes participation in the program.<sup>225</sup> However, the Melbourne Research Alliance to end violence against women and their children told the Commission that it understood that 'several MBC [programs] in Victoria initially refer men to a substance use program before they are eligible for working in a group with other men on their DFV [domestic and family violence issues]', highlighting that this approach has not been evaluated.<sup>226</sup> This approach 'arises from a pragmatic stance that men need to be beyond chaotic substance use before they can actively engage with their other problematic issues'.<sup>227</sup>

No To Violence estimates that 10 to 15 per cent of men are screened out in the eligibility assessment process.<sup>228</sup> Under the practice guidelines, MBCP staff are required to identify and explore other options for ineligible men, such as counselling. Staff should also request permission to contact the man's partner and children to check on their safety.<sup>229</sup>

Once assessed as eligible, in order to be assessed as suitable to participate in an MBCP, the perpetrator must agree to:

- ▷ staff having regular contact with any women and children who might be affected by their violent and controlling behaviour
- ▷ abide by the law, including all the requirements of any legal orders in force
- ▷ the policies on limited confidentiality and responding to criminal acts or breaches of court orders
- ▷ give up their access to guns and other weapons
- ▷ an ongoing evaluation and monitoring of their progress in changing their violent behaviour and attitudes.<sup>230</sup>

The average group size is 12 men, although some providers take larger numbers due to demand.<sup>231</sup> Some providers run 'mixed' groups with men who are voluntary participants in the same program as men who are mandated to attend (for example, as a condition of a community correction order),<sup>232</sup> on the basis that it can often have a positive impact on those attending involuntarily.<sup>233</sup> However, one man who had attended a program gave the Commission a contrary view:

If men are there because they are forced to be there, I'm not sure how they can confront the issues and start dealing with them and making changes. I was motivated compared with most men and I noted a big difference between my experience and those of men who were there involuntarily. A lot of them seemed to view themselves as victims. I think one key thing was that in order to change they needed to see themselves for who they truly are—the perpetrator, not the victim.<sup>234</sup>

Some providers offer fixed programs (with the same cohort of men participating from beginning to end), while others have a rolling or continuous entry where men can enter at any point and leave at different times to help reduce the waiting time for a place.<sup>235</sup> The Commission was advised that rolling programs allowed for greater engagement between participants, with more experienced participants challenging newcomers' beliefs and prejudices, creating positive peer-group pressure.<sup>236</sup>

### Online program delivery

The delivery of online resources for perpetrators is a recent and developing area both in Australia and internationally. In what is reported to be a world first,<sup>237</sup> there have been three trials held in Victoria by Violence Free Families in 2014 and 2015.<sup>238</sup> These trials have a similar curriculum to that of face-to-face programs and are guided by two trained facilitators with 12 participants. They run for two hours, every week, over 14 weeks.<sup>239</sup>

Those who support online delivery methods told the Commission that using technology to run programs can help overcome barriers some men encounter in accessing face-to-face MBCPs due to a lack of programs, conflicting work commitments or privacy concerns (particularly in rural and regional areas).<sup>240</sup>

Violence Free Families referred in its submission to an evaluation conducted by the University of Melbourne which found that there was no higher risk to victim safety when a program was delivered online, as opposed to face-to-face, and that partners expressed satisfaction with the course and felt that participants had changed.<sup>241</sup>

No To Violence raised concerns about online delivery replacing face-to-face programs, warning that additional risk assessment and safety planning would be required.<sup>242</sup> No To Violence also noted that online delivery did not meet its minimum standards or similar standards set by overseas bodies.<sup>243</sup> However, No To Violence supports online methods of engagement supplementing face-to-face modes of delivery, for example as an initial engagement and holding environment while men wait for a face-to-face intervention, or to provide a second weekly 'check-in' session.<sup>244</sup>

## Men's behaviour change programs in the correctional system

While there is a range of programs available for violent offenders in prisons and on community-based orders, it is only relatively recently that family violence-specific programs have been designed in Victoria. The Corrections Victoria Strategic Plan 2015–2018 lists addressing family violence through the implementation of family violence programs for prisoners and offenders and early identification of offenders at risk of committing family violence as part of its strategic priority to reduce re-offending.<sup>245</sup>

### Custodial programs

For prisoners, Corrections Victoria uses a pathways approach with differentiated responses based on offending and risk profiles. An assessment of the offender is 'undertaken to identify the risks of violent offending and subsequent treatment needs'.<sup>246</sup> Those who are identified as having committed a family violence-related offence and are eligible for an offender behaviour program, undertake the Spousal Assault Risk Assessment psychometric tool, which is administered by a Corrections Victoria clinician (also discussed in Chapter 6).<sup>247</sup>

Corrections Victoria has announced that it is introducing a number of initiatives across the correctional system in 2015–16 that are aimed at addressing family violence. In addition to improving the way perpetrators of family violence are identified, Corrections Victoria is prioritising the delivery of targeted family violence programs and services to perpetrators. This includes by implementing a new family violence service delivery model and treatment pathway for prisoners and offenders; expanding the cultural wraparound services to better support Aboriginal perpetrators of family violence who engage in mainstream programs; implementing an Aboriginal-specific family violence program; and reviewing existing parenting programs in male prisons to include a family violence component.<sup>248</sup>

Mr Andrew Reaper, Deputy Commissioner, Offender Management in Corrections Victoria described the proposed rollout of perpetrator interventions in the custodial environment and how different models were used to target offenders of varying risk levels. Mr Reaper noted that MBCPs would be offered to low-risk offenders, noting that the psycho-educational model was best suited to this cohort.<sup>249</sup> Moderate and high-risk offenders would be offered the Changeabout program, which was designed on Risk Needs Responsivity principles described above.<sup>250</sup>

Changeabout is a family violence offence-specific program for offenders where an assessment demonstrates that clinical intervention is required. It addresses criminogenic needs (that is, risk factors linked to recidivism). It deals with family violence in a broader context (beyond just intimate partner violence) and runs for 88 hours. Mr Reaper gave evidence that this is an appropriate 'dosage' for offence-specific intervention.<sup>251</sup>

Developed in New Zealand, the program contains six modules: orientation, beliefs and attitudes that support abuse, managing emotions, relationship skills, alcohol, drugs and family violence, and impact on others.<sup>252</sup> It uses a 'cognitive behavioural therapy and social learning approach which accommodates learning styles and capabilities of participants (the 'responsivity' principle)'.<sup>253</sup>

The Family Violence program, an offence-related program which also targets a range of criminogenic factors associated with family violence, is available for moderate and high-risk prisoners (and community based offenders). It targets prisoners and offenders who consent to participate and runs for 57.5 hours.<sup>254</sup>

Offenders who also display treatment needs in relation to generally violent behaviour can be recommended for a Violence Intervention Program.<sup>255</sup> This can be recommended as an alternative to, or in conjunction with, family violence specific treatment.<sup>256</sup> There are also a number of sexual offence treatment programs.<sup>257</sup>

Community corrections staff are required to undertake a number of training programs, including training on the CRAF. This training is designed to assist staff to identify risk factors associated with family violence, as well as respond appropriately.<sup>258</sup> In addition to CRAF training, in 2015 Corrections Victoria engaged Kildonan UnitingCare to deliver statewide training to community corrections staff on managing perpetrators of family violence on community-based orders.<sup>259</sup> This training is mandatory and is intended to provide case managers and supervisors with strategies and tools to engage effectively with offenders who are perpetrators of family violence.<sup>260</sup>

### Programs for men on community-based orders

Corrections Victoria utilises community-based MBCPs for male family violence offenders on community correction orders where the order contains a condition that permits or requires a program to be provided. For general offences, treatment and rehabilitation conditions are generally not recommended where risk of re-offending is assessed as low. However, family violence offences are treated differently and Corrections Victoria will recommend a 'treatment and rehabilitation' condition irrespective of the offender's general risk of reoffending.<sup>261</sup>

### Aboriginal-specific family violence correctional programs

The Dardi Munwurro Strong Spirit program is available to people on community correction orders and those serving custodial sentences. It is a culturally specific MBCP with a focus on family violence, cultural identity, leadership and the role of an Aboriginal man in the family setting. The six day program runs over three weeks.<sup>262</sup> The Commission understands that Corrections Victoria does not provide any other culturally specific programs that address perpetration of family violence.<sup>263</sup>

Mr Andrew Reaper noted that:

It's rare that we have ever run a program specific to Aboriginal prisoners, just in terms of the number of people who have been assessed and ready to run that program over time. As a result, over a number of years we have developed our cultural guidelines and cultural wraparound model where we have been able to train and support or clinicians to offer culturally appropriate and specific support to the Aboriginal prisoners through those more clinical based programs.<sup>264</sup>

Data provided to the Commission on participation in non-family violence-specific violent offender programs in Victorian prisons between April 2011 and June 2015 indicates that in most programs, one or two Indigenous prisoners participate. Some program groups have no Indigenous participants. In the examined period, 57 groups ran in the moderate and high Violence Intervention Program strand described below. Of the 486 participants, 52 were Indigenous.<sup>265</sup>

### Specialist forensic drug and alcohol and mental health programs

Forensicare's prison services include reception screening by senior psychiatric nurses for all male prisoners entering the Victorian prison service and the provision of visiting psychiatric services throughout the public prison system.<sup>266</sup> There are a variety of clinical programs for those on community correction orders, including the Problem Behaviour Program, which assesses and treats offenders whose behaviours pose a high risk to the community.<sup>267</sup>

While not family violence-specific, this program provides individual, specialist, intensive psychological and psychiatric assessment and treatment. It is targeted at offenders who have been sentenced for crimes such as adult sexual assault and rape, serious physical violence, stalking and threats to kill, all of which may occur in a family violence context.<sup>268</sup> Thirty-six per cent of 100 randomly sampled PBP participants in 2014–15 had used family violence and 61 per cent had engaged in intimate partner violence or stalking.<sup>269</sup>

In addition, Caraniche provides forensic drug, alcohol, violence prevention and rehabilitation services within adult prisons, juvenile justice and the community corrections system.<sup>270</sup> It reported that the majority of clients who reported being a perpetrator of family violence were also involved in other forms of violence and 'therefore in many cases family violence needs to be addressed alongside other forms rather than in isolation'.<sup>271</sup>

## Other types of interventions

### The Men's Case Management initiative

The Department of Health and Human Services, through the National Partnership Agreement on Homelessness,<sup>272</sup> has funded the Men's Case Management initiative to respond to the risk posed by men with complex and high-level needs who have used violence.<sup>273</sup> This initiative recognises that men who are excluded from the family home following the use of violence may need assistance to find suitable and stable accommodation.<sup>274</sup>

This initiative has been somewhat controversial, with some stakeholders raising concerns about allocating funding to assist violent men.<sup>275</sup> However, proponents of Men's Case Management services note that the safety of women and children is the highest consideration for this initiative,<sup>276</sup> as MCM seeks to assist men to take responsibility for their use of violence and mitigate the risk of re-offending.<sup>277</sup> It is also a condition of men receiving case management services that women and children are contacted and offered support to contribute to ongoing risk assessment and management, although the extent to which this occurs varies in practice.<sup>278</sup> The importance of providing this type of support to men was echoed in submissions received by the Commission, which called for case management for men in the homelessness system as a means of reducing the pressure on a woman to reunite with the perpetrator of family violence because he 'has nowhere to go'.<sup>279</sup> The provision of accommodation for perpetrators is discussed further in Chapter 9.

MCM is provided through nine agencies, including through five Aboriginal services.<sup>280</sup> The Department of Health and Human Services provided \$0.5m in funding to the mainstream agencies and \$0.6m in funding to the Aboriginal agencies for 2014–15.<sup>281</sup>

One of the aims of MCM is the identification of individual needs and the facilitation of appropriate referrals, including to MBCPs and for mental health and drug and alcohol services.<sup>282</sup> Mainstream agencies are able to provide some of these complementary services.<sup>283</sup> The program also provides assistance at court.<sup>284</sup> MCM services provided by Aboriginal agencies utilise a 'case coordinator' who takes referrals from, and makes referrals to, relevant services.<sup>285</sup>

An evaluation of the MCM initiative in 2011 noted that the success of the initiative was difficult to measure. Challenges included the lack of development of a culturally appropriate response for men from culturally and linguistically diverse backgrounds, difficulties engaging with men with complex needs, and varying approaches by agencies to implementing the women's contact role.<sup>286</sup> Among other things, it was recommended that both formal and informal pathways into MCM services be developed and strengthened, and that women's contact work be implemented with greater consistency.<sup>287</sup>

### **Counselling and referral services**

There are two main telephone counselling, information and advice services for men who are using violence or abuse in their relationships: MensLine Australia and Men's Referral Service (MRS). Both services offer advice to the men themselves, and also for anyone who is concerned about a man who is using violence.

MensLine was launched in 2001 as an initiative of the Commonwealth Department of Social Services.<sup>288</sup> Among other things, it provides telephone and online counselling, advice and referrals to men throughout Australia in relation to the use of family violence.<sup>289</sup> It also provides support for men in rural and regional areas, including through its video counselling service.<sup>290</sup> In 2015, the Commonwealth Government announced that it would contribute \$2 million in additional funding to MensLine for tools and resources to support perpetrators to not re-offend, as part of its \$100 million package of measures to provide a safety net for women and children at high risk of experiencing violence.<sup>291</sup>

MRS is an Australia-wide service that focuses specifically on men who use family violence. The service is operated by No To Violence and is supported by the Victorian and New South Wales Governments.<sup>292</sup> It engages with over 5000 perpetrators a year in Victoria and New South Wales.<sup>293</sup> MRS also provides support to family and friends who are experiencing family violence, as well as to professionals who wish to support a male, female or client using or experiencing family violence, and women seeking information about male family violence.<sup>294</sup>

### **Court Integrated Services Program**

The Court Integrated Services Program is a case-management program that runs for up to four months and currently operates in three magistrates' courts across Victoria.<sup>295</sup> Services are also provided to Koori clients through the Koori Liaison Officer Program, which operates as part of CISP.<sup>296</sup> In 2014, the Victorian Government committed \$9.55 million over four years to expand CISP to additional court locations, with an emphasis on family violence perpetrators.<sup>297</sup>

The program provides access to services and support to applicants, respondents and accused, where an accused is on summons, bail or remand pending a bail hearing,<sup>298</sup> although case management is currently only provided to those charged with criminal offences, including breaches of family violence intervention orders.<sup>299</sup> CISP is a distinct program that runs separately to the Family Violence Court Division.<sup>300</sup>

CISP aims to use therapeutic intervention to provide short-term assistance with health and social needs prior to sentencing, as well as to mitigate risk and reduce re-offending.<sup>301</sup> The program focuses on the issues underpinning the offending, and promotes behaviour change and compliance with orders.<sup>302</sup>

An accused can be referred to CISP by the police, legal representatives, magistrates, court staff, support services, family or friends. An accused can also self-refer to CISP.<sup>303</sup> A magistrate determines eligibility for CISP based on an assessment conducted by CISP staff that evaluates the risk and causes of offending.<sup>304</sup> To be eligible for the program, there must be a likelihood of re-offending and the accused must have at least one of the following:

- ▷ a physical or mental disability or illness
- ▷ drug and alcohol dependency and misuse issues
- ▷ inadequate social, family and economic support that contributes to the frequency or severity of their offending.<sup>305</sup>

The services provided by CISP can include assessing and referring an accused for treatment (including to MBCPs and psychologists); case management; brokering treatment for access to drug and alcohol, mental health, housing and acquired brain injury-related needs; referral to outreach services; and providing progress reports to the court.<sup>306</sup> A key focus of CISP is holding perpetrators to account, as they are required to attend weekly meetings with court case managers and their attendance at appointments with treatment providers is monitored. They are also required to appear before a magistrate on a regular basis.<sup>307</sup> CISP case managers can also liaise with Victoria Police prosecutors, informants and statutory agencies such as Child Protection to manage risks.<sup>308</sup>

While CISP is not directed specifically at family violence, it is increasingly being used by people presenting with family violence issues.<sup>309</sup> In evidence, we heard from Mr Glenn Rutter, Manager, Court Support and Diversion Services, and Ms Joanne de Lacy, Team Leader, CISP, both from the Magistrates' Court of Victoria. They told us that as at 30 April 2015 19 per cent of all CISP assessments involved family violence, including as a result of breach of family violence intervention order offences.<sup>310</sup>

In evidence, Mr Rutter and Ms de Lacy described how CISP reduced re-offending and stated that, according to an independent evaluation conducted in 2009, 50.5 per cent of CISP participants incurred no further criminal charges.<sup>311</sup> They attributed the reduction in offending to the focus on the underpinning issues and the role that CISP plays in linking the participants to a range of different support services.<sup>312</sup> As a result, they acknowledged that CISP may not be effective for perpetrators of family violence who do not have these underlying issues but rather use violence because of their attitudes towards women.<sup>313</sup>

### **Perpetrator programs for fathers**

The Commission heard how fathering can be a powerful internal motivator for perpetrators.<sup>314</sup> Dr Katreena Scott, Associate Professor and Canada Research Chair, Department of Applied Psychology and Human Development, University of Toronto, described how this motivation can be tapped in perpetrator programs:

... I find that fathering is a very strong motivator overall, so it tends to be easier for a system to engage men in the project of becoming better fathers than it might be to becoming better partners.<sup>315</sup>

While MBCPs seek to challenge men to think about the impact of their behaviour on their children,<sup>316</sup> research led by the University of Melbourne and Professor Humphreys states that MBCPs only minimally address the issues of fathering for men who use violence,<sup>317</sup> and that program providers should ensure that they are up-to-date with new developments regarding the use of fathering modules during or following MBCPs.<sup>318</sup>

Dr Scott told the Commission that it is inappropriate to focus on a mother's capacity to protect rather than the need for a father to change, particularly given that family courts often make orders for children to have ongoing contact with fathers, and that, as a result, fathers need to be engaged in order to reduce the harm caused to their children.<sup>319</sup>

In its submission to the Commission, Anglicare Victoria also acknowledged the importance of men understanding that children are deeply affected by their violence and that this can be a real motivator for behavioural change.<sup>320</sup> This was also echoed by Mr Vlasis, who described this understanding as 'unlocking a motivation to change' in some men.<sup>321</sup> Using fathering as an incentive for men to change their behaviour was also referred to during our expert roundtables, where we heard:

... in terms of a man's internal motivators towards change ... playing the parent is a huge part of their self identity and they want to be good parents most of the time.<sup>322</sup>

It was also explained that the focus on fathering must be balanced with the shame that fathers feel about the damage they have caused their children and that programs should address how men deal with the consequences of this violence for their children.<sup>323</sup>

In Chapter 10, the Commission explores various programs directed at fathers that are designed to develop parenting skills and educate fathers on the ways in which family violence can affect children. While most fatherhood programs have a prevention focus, some are available to men who have used violence, such as the Caring Dads Program and the Dads Putting Kids First (DPKF) program. These programs are described below.

Anglicare Victoria developed the DPKF program for men who have completed MBCPs.<sup>324</sup> The pilot program ran for 10 weeks with two-hour weekly sessions covering parent-child relationships, co-parenting relationships, cumulative harm, the neurobiology of trauma, having conversations about family violence with children, the development of resilience in children, and how men identify as fathers. An evaluation of the 12 month pilot indicated that it increased fathers' understanding of the harm inflicted on children by, and the likely impact of, their behaviour.<sup>325</sup> Following completion, fathers reported feeling better equipped with practical parenting strategies.<sup>326</sup>

Unlike the DPKF program, the Caring Dads program is a stand-alone program and does not require perpetrators to have first completed an intimate partner violence program.<sup>327</sup> It is available to fathers who have physically abused, emotionally abused or neglected their children, or exposed their children to domestic violence, and those who are considered to pose a high-risk for these behaviours.<sup>328</sup> The program runs for 17 weeks and includes 15 group sessions, two individual sessions and an intake interview.<sup>329</sup> Amongst other things, it focuses on parenting education, cognitive behavioural therapy, planning for the future and outreach to mothers.<sup>330</sup>

In addition, Family Violence Court Intervention Program service providers run groups about parenting without violence. An evaluation of this and other programs reports that some men who completed the program noted the positive effects that it had on their parenting, and that this was an effective motivator for men.<sup>331</sup> Experts have noted that a specialised approach that addresses the complexities of the effects of violence in the family structure is required for addressing parenting as part of programs for men who use violence.<sup>332</sup>

## Programs for women who have used violence

It is important to note that women who use violence in their family relationships often do so in self-defence or retaliation against violence that is perpetrated against them, as a result of abuse they have experienced in the past and/or as a consequence of a range of complex criminogenic factors.

Research suggests that there is a higher correlation between violent behaviour and certain risk factors for women than men.<sup>333</sup> The risk factors include substance abuse,<sup>334</sup> mental health issues, post-traumatic stress disorder, personality disorders and a history of physical, sexual or psychological abuse.<sup>335</sup>

I did find that with the drugs, I ended up being a bit violent with the guy I'm with now ... I never thought I would see the day when I would be like that. Drugs didn't help ... I found myself doing what had been done to me.<sup>336</sup>

In Chapter 34, the Commission discusses the impact of family violence victimisation on subsequent offending behaviour by some women.

The Commission heard from a number of people that there is a need for particular programs and services to assist women who have used violence.<sup>337</sup> Some submissions noted that all current behaviour change programs are targeted towards men.<sup>338</sup> No To Violence submitted that it would be inappropriate and ineffective to model programs for women on MBCPs, and that programs instead need to draw on evidence about the links between violence by women and past victimisation.<sup>339</sup> The One in Three Campaign submitted that perpetrator programs should be available to men and women, and where appropriate in mixed groups.<sup>340</sup> This campaign rejects the current model of behaviour change group work in Australia, considering its basis to be 'about blaming and shaming men, more than giving them the insights and support to help them stop their abusive behaviour'.<sup>341</sup>

Data from the Personal Safety Survey conducted by the Australian Bureau of Statistics indicates that one in 19 adult men have experienced violence from a current or former partner since the age of 15.<sup>342</sup> However, a paper published by the Australian Domestic & Family Violence Clearing House notes:

... [b]oth men and women perpetrate a range of different forms of aggression in relationships but may have different motivations, including self-defence. Both men and women can experience violence by an intimate partner but their experience of this is likely to be different in terms of the forms of violence experienced, its severity and impact. The severity of physical injury and levels of coercion from all forms of violence in relationships appear to be greater for women than for men.<sup>343</sup>

Some commentators consider the complex issue of how and why women use violence needs to be considered, and it has been suggested that different interventions are required if only a small minority of women are motivated to use violence for similar reasons to men.<sup>344</sup> It has been contended that it is particularly necessary to consider how women come to use violence in intimate partner relationships and untangle the situations where she is responding to her partner's violence, that is, where he is the primary aggressor.<sup>345</sup>

Further discussion of the identification of primary aggressors can be found in Chapter 14.

Internationally, a range of interventions for women who use violence have been developed. No To Violence explained that:

Proactive arrest policies are resulting in an increasing number of women arrested for family violence offences. Research in the US, New Zealand and Australia demonstrate that the majority of these women are victims of their male (ex) partner's primary aggression or use of coercive controlling tactics.<sup>346</sup>

In this context, attempting to establish behaviour change programs for women aggressors modelled on programs for men are inappropriate and counter-productive. In recognition of this, to work with female offenders convicted of family violence crimes, a series of intervention programs for women using force have been developed in the US. These draw upon research evidence demonstrating that most participants are likely to be victims of substantial family violence and coercive control from their male intimate partner, and are designed to explore their use of force within the context of this victimisation.<sup>347</sup>

Based on the US experience, four principles emerge:

- ▷ Traditional perpetrator programs designed to counter male violence are ill-suited to respond to women who use violence, the majority of whom do not do so for the purpose of intimidation or control.<sup>348</sup>
- ▷ Intervention programs designed for women who have used violence should address a broad range of circumstances including persistent victimisation, the imperative of self-defence and the motivation of retaliation.<sup>349</sup>
- ▷ Programs should also consider the consequences that may result from refraining from the use of violence such as injury, shame of feeling dominated and the reactions of other people.<sup>350</sup>
- ▷ Intervention programs should avoid a one-size-fits-all approach, acknowledge intra-group differences and be tailored to the unique and complex circumstances that exist in each case.<sup>351</sup>

Some examples of programs developed in the US for women who have used violence include:

- ▷ the Women Who Resort to Violence Program, which is designed for women who have used violence in retaliation or self-defence. The program uses cognitive behavioural techniques and aims to empower women, teach skills, circulate knowledge and change attitudes through lectures, discussions and homework.<sup>352</sup> The program educates participants about issues relating to domestic violence such as power and control, risk factors, children's issues, substance abuse, healthy and unhealthy relationships and differences between male and female perpetrators. The program also teaches about safety planning and anger management techniques.<sup>353</sup>
- ▷ the Beyond Violence Intervention, which is a 20-session program for women prisoners which aims to prevent them committing further violence. The program is based on the premise that early and ongoing experiences of trauma affect subsequent decision-making processes and may lead to mental health conditions, anger issues and drug and alcohol dependency.<sup>354</sup> The curriculum focuses on these issues, as well as gender 'socialisation' and victimisation and utilises a range of strategies including cognitive behavioural restructuring, mindfulness, role-playing, trauma trigger detection and psycho-education.<sup>355</sup>

In November 2015, the Turnbull Government announced that it will provide \$1.4m for a project grant for the 'Aboriginal and non-Aboriginal women perpetrators of violence: a trial of prison-based intervention (Beyond Violence)', which is being administered by the University of New South Wales.<sup>356</sup> The study will implement and evaluate the Beyond Violence program among women prisoners with histories of violence, and targets mental health, substance use and violence.<sup>357</sup> This study is a collaboration between Australian and United States researchers, including those involved in the Beyond Violence Intervention in the United States. It is being run on the premise that there is a gap in programs designed specifically for women and that there are important distinctions between female and male violent offenders that are important for their rehabilitation.<sup>358</sup> This is the first study of its kind in Australia.<sup>359</sup>

In Victoria, all prisoners and community-based offenders who are classified as serious violent offenders are directed into the serious violent offender pathway for screening. For female offenders, the Historical Clinical Risk 20 (HCR-20) tool is then used to assess the risk for violence.<sup>360</sup> Female offenders who are assessed as moderate or high-risk of re-offending for violence can be referred into two programs to address issues associated with violent offending: *See Change for Women* and *Making Choices Program for Women*.<sup>361</sup>

The *See Change for Women* Program specifically targets violent behaviour and a range of factors associated with violent offending and is available to both prisoners and community-based offenders.<sup>362</sup> *Making Choices for Women* is a holistic program available to prisoners that targets a range of criminogenic needs related to general re-offending, part of which includes violence propensity and anger dysfunction.<sup>363</sup>

## Challenges and opportunities

The following section outlines a number of challenges associated with MBCPs and highlights a number of opportunities for change.

The Commission heard there are a number of practical limitations around existing structure and design of MBCPs, including in relation to program duration. In addition, inconsistencies in the application of No To Violence's minimum standards has led to variations in course content, the use of contact workers, course activities, and program duration. This lack of consistency in service delivery can also be attributed to an inadequate compliance framework.

Another issue associated with MBCPs is the lack of individual engagement with perpetrators. The Commission heard there is insufficient breadth and diversity in interventions, with programs not catering for perpetrators from diverse communities or for those with complex needs relating to, for example, serious mental illness or substance misuse.

There is also a need to build on the existing knowledge and evaluation base of MBCPs to determine their effectiveness.

The use of family violence intervention order conditions and counselling orders to expand the capacity of magistrates to mandate perpetrators' engagement with various services is also considered, as well as the use of other court mechanisms that can be used for intervention.

The section also highlights issues associated with convoluted and inequitable pathways into programs, and briefly discusses funding and demand pressures, as well as workforce issues associated with MBCPs. Proposals to restrict the supply of alcohol in order to address alcohol-related family violence are also considered.

## Limitations of the structure and oversight of existing men's behaviour change programs

As outlined earlier in this chapter, there is a spectrum of views—which is increasingly narrowing as the need to draw on successful aspects of a range of interventions is recognised—on the underlying methodology that should underpin MBCPs to make them more successful. However, the Commission also heard that the existing structure and design of MBCPs have a number of practical limitations that was undermining their effectiveness. Stakeholders also raised concerns with the compliance framework and cited the need for more rigorous evaluation of MBCP effectiveness. These issues are discussed further below.

### Effectiveness of MBCPs

Research into whether MBCPs are effective in reducing family violence is complex and controversial. A recent literature review conceded that 'it is still unclear as to what specific factors trigger men to change their behaviour'.<sup>364</sup> This same review found that:

... research indicates that the process of change is complex and that perpetrators have to negotiate individual (psychological aspects and issues regarding anger and stress management), interpersonal relations and wider external factors (ie employment status and other economic pressures) in order to initiate behaviour change.<sup>365</sup>

One of the key challenges is around the ethical issues associated with evaluation methodology. For example, there are risks associated with one group of perpetrators and their families receiving support through an MBCP and another group being excluded and possibly placed at risk for the sake of the study.<sup>366</sup> In addition, there is a lack of consensus on the threshold issue of what constitutes 'success' and what outcomes are necessary for a program to be considered effective.<sup>367</sup> For example, an MBCP may be 'effective' notwithstanding a failure to change a man's behaviour if it links his partner to support services, emboldens her to leave a dangerous relationship, or provides a degree of oversight and supervision of the family during the duration of the program.<sup>368</sup>

Other limitations on evaluations of MBCPs include: small sample sizes, reliance on interviews with men self-evaluating whether their behaviour had changed, difficulty in being able to follow-up with new partners to assess ongoing behaviour and in-house evaluations by staff with a bias towards success.<sup>369</sup>

As a result, robust empirical evidence about best practice is difficult to achieve. Locally, there have been few evaluations of Australian programs, with most of what we know about the effectiveness of programs drawn from international research.<sup>370</sup>

The Commission was told that although there were some promising results from well-designed program evaluations, overall 'the evidence relating to the overall effectiveness of perpetrator behaviour change programs is both weak and unconvincing'.<sup>371</sup> Professor Day told the Commission:

Let me say that men's behaviour change programs can have a significant profound impact on the lives of some participants. I don't believe that there's enough evidence to conclude that they are effective in changing the behaviour of most of the people who go through the programs.<sup>372</sup>

Professor Jim Ogloff AM, Professor, Forensic Behavioural Science and Director, Centre for Forensic Behavioural Science, Swinburne University of Technology, described the international evidence on the effectiveness of programs as 'mixed':

It is a hotly contested, highly controversial field. There are some studies which show success, some studies that don't show success, and people have been critical again, not so much about the focus of the program, but about the fact that you are asking to do too much with too little. Again, I think if we just step back logically and think, as I mentioned, that we are looking at people whose behaviour is entrenched sometimes over a lifetime.<sup>373</sup>

A key evaluation of MBCPs, Project Mirabal in the United Kingdom, shifted the focus from men to women and looked at whether women—both partners and ex-partners—felt safer as a result of their partner or former partner having attended an MBCP. Eleven program providers participated in the study, with variations in funding sources, the type of organisation and in how well integrated the men's program was with other services.<sup>374</sup> Women were interviewed on five occasions at different points throughout the program over a period of fifteen months.<sup>375</sup> The findings were based on how women felt at the beginning of the program compared to how they felt at the end.<sup>376</sup>

Notwithstanding methodological limitations of the study, including the lack of a randomised control group, the study has been praised for its female-centred approach.<sup>377</sup>

Six measures were tested and the findings included:

- ▷ Some improvement in respectful communication between the perpetrator and partner or ex-partner<sup>378</sup>
- ▷ Some reduction in controlling behaviour by perpetrators such as preventing contact with friends and family<sup>379</sup>
- ▷ A decline in the use of physical and sexual violence by perpetrators and an increase in feeling safer; however, women still reported levels of abuse and of feeling unsafe<sup>380</sup>
- ▷ Some improvement in fathering by perpetrators<sup>381</sup>
- ▷ Better self-awareness on the part of men as a result of participating in a program<sup>382</sup>
- ▷ Minimal improvement in children's behaviour, for example, mothers reported feeling their children appeared less anxious at the end of the program.<sup>383</sup>

Chief Executive Officer of the Men's Referral Service and No To Violence, Ms Jacqui Watt, agreed there is a need to build on the existing knowledge and evaluation base for MBCPs.<sup>384</sup> ANROWS has identified the evaluation of MBCPs (including the need for the development of best practice evaluation principles) as an area for further research.<sup>385</sup>

## Personal experiences of men's behaviour change programs

The Commission heard mixed experiences of MBCPs. One man who attended a program told the Commission:

The MBC programs helped me to reflect on my behaviour and showed me how damaging that kind of behaviour was. The MBC programs made me realise I'm not the only person in the world with this problem. I was educated about the typical cycle of violence. This was mind blowing.<sup>386</sup>

We also did role playing. I put myself in my wife's position, which was a real eye-opener. I understood what she was going through, to a degree. I felt much more compassion for my wife after that.<sup>387</sup>

Another man we had consulted who had attended an MBCP told us:

A couple of things I took out of the programs that were really great—all of these programs talk about cycle of violence, start session with where are you on a cycle of violence, and a couple of times I questioned it: why do you have to be on the cycle of violence? And I got to the point of understanding, and after a while we did start talking about how you get off it, the cycle is dependent on having these power games, always coming from a place of selfish and egotistical, and from a place of not really, always wanting to get something for yourself, and in that place, whereas to get off the cycle you must empathise with another person, must be compassionate, must walk in other person's shoes. And I thought that was positive.<sup>388</sup>

In personal submissions and in community consultations, the Commission heard from women who had partners or former partners attend MBCPs. Many of them were doubtful about whether the program had made a difference for them or their partners.

He used to gloat about 'gaming' the MBCP and talking about the 'tips and tricks' exchanged between participants of the program.<sup>389</sup>

... all the MBCP did was give him enough information to know how to not get [caught] doing and saying the wrong things, all they have to do is nod and agree for a few hours and they get a certificate.<sup>390</sup>

My partner has done an MBCP. They don't work. He's done one every time he goes to jail.<sup>391</sup>

One woman talked in her submission about how her husband's participation in a program helped reduce physical, but not other forms of abuse.<sup>392</sup>

Victoria Legal Aid told the Commission that, anecdotally, its clients 'have indicated that they have found participation in behaviour change programs beneficial, particularly where they were seeking to maintain a family relationship'.<sup>393</sup>

## Program duration

The No To Violence minimum standards stipulate that there should be a minimum of 12 two-hour sessions to be spaced no more than fortnightly. Contact hours do not include time spent on initial assessment or follow-up processes.<sup>394</sup> However, there is considerable variation in course content, course activities and duration among different MBCP providers.<sup>395</sup>

In evidence, the Commission heard from Mr Vlasis that there are usually between 12 and 24 sessions per program,<sup>396</sup> and that most of No To Violence's member provider programs are between 12 to 18 sessions.<sup>397</sup> A 12 session program would generally run over three months. There are a few programs that have a second stage and, therefore, run for a longer duration.<sup>398</sup>

A number of providers told the Commission that the current program duration was too short. In its submission, Bethany Community Care noted it could take months to engage with men and their partner or ex-partner and that by the time this happened, the program was close to ending.<sup>399</sup> No To Violence cited a growing international consensus that the minimum intervention length needs to be six months and 50–60 hours of intervention (approximately double the duration currently funded by the Department of Health and Human Services).<sup>400</sup> In evidence, Mr Vlasis also noted that many program providers would like to work with men for longer periods but do not have sufficient resources,<sup>401</sup> and stated that longer programs are required to address the complex work involved in MBCPs.<sup>402</sup> Professor Ogloff stated it was unrealistic to expect MBCPs that run for 12 to 18 sessions to produce long-term change, including in circumstances where behaviour has been entrenched over a lifetime.<sup>403</sup> A 2013 study of perpetrator programs in the United States, where men were largely mandated to attend as part of sentencing for a criminal offence, found programs ran for between 26 and 52 weeks.<sup>404</sup>

In the United Kingdom, Project Mirabal, the 2015 evaluation of domestic violence perpetrator programs, concluded that it is the duration and depth of programs which makes it possible to go beyond simple behaviour disruption to deeper changes which make a difference in the lives of women and children.<sup>405</sup>

### **Access to partner contact workers**

As noted earlier in this chapter, men who participate in an MBCP must agree to their partner or ex-partner being contacted and informed of their attendance and progress.<sup>406</sup> Contact should first occur during a man's intake assessment or, if this is not possible, before a man attends his first group session.<sup>407</sup> If women and children wish to have ongoing contact, the minimum standards provide for contact every three to four weeks throughout the program and for contact to be made when the man leaves the program. However, an arrangement for contact can be made at the discretion of the woman and the worker.<sup>408</sup>

The role of a contact worker is to provide support to a perpetrator's partner or ex-partner and children. There are two main objectives of the role of a contact worker: ensuring the safety and wellbeing of women and children; and providing information and resources to help partners and former partners make decisions about the relationship.<sup>409</sup> It also has a strong risk management function:

A benefit of MBCPs for women is that they are provided with space and time to assess their safety needs and develop a safety plan, they are linked into relevant support and advocacy services, and they receive ongoing risk assessment and risk management.<sup>410</sup>

In programs where partner contact was offered, women found it to be highly valuable, especially in terms of helping them to assess their safety levels. This positive opinion was unchanged regardless of whether women reported a change in the participant or not-validation and confirmation of the participant's wrongdoing was of great value.<sup>411</sup> The Commission heard that the view of a third party who worked with the perpetrator was influential.<sup>412</sup> One woman told the Commission that she felt greatly supported when her partner's contact worker helped to ensure a safety plan was in place, as the perpetrator was still a risk to her and her family.<sup>413</sup>

For many women still in a relationship with their partner, partner contact may facilitate a 'reality check' for women to learn whether their partner had actually attended sessions and the degree of progress they were making. This assisted with decision-making about the future of the relationship.<sup>414</sup> Partner contact has been confirmed as an important component to men's programs in international research, on the basis that it ensures women are properly apprised of prospects of change, are alerted to the potential for a perpetrator to use his participation in a program to manipulate her and that they have access to appropriate support and referrals.<sup>415</sup>

Despite the requirement for this element of MBCPs to be offered to women, the Commission heard that not all program providers were able to fulfil this role in practice.<sup>416</sup> In particular, according to a study of fifteen women whose partners attended an MBCP, women in rural and regional Victoria experienced a lower level of service from partner contact workers. The study found there were a number of service gaps which impacted on the safety of women—specifically, on their knowledge and access to support and on their capacity to make informed choices.<sup>417</sup> The study indicated that the extent to which partner contact was practised also depended on resources, the capacity or availability of other services within the region, worker skill and style and the prioritising of worker time. This was despite the fact that all four programs in the study were government funded and subject to No To Violence standards.<sup>418</sup>

No To Violence has indicated that current funding levels have not kept pace with ‘industry expectations concerning the purpose, modality and longevity of partner contact/support components’, which have grown considerably in the last decade.<sup>419</sup>

### **Individual engagement**

In addition, some stakeholders raised concerns about the lack of individualised engagement with perpetrators. As MBCPs are essentially group-based counselling sessions, most men (that is, men who are attending in a voluntary capacity) only have a single one-on-one session with a facilitator to assess their eligibility to join a program.

Individual attention or case management is generally reserved for those who:

- ▷ are ineligible for MBCPs and referred to specialist mental health or drug and alcohol services, or
- ▷ are mandated under a court order to attend an MBCP (as funding for these providers extends to up to three individual sessions to help address those men who are resistant to attend group work and to get them ‘group-ready’).<sup>420</sup>

The Commission was told that a significant issue for MBCP providers is a lack of one-on-one engagement and follow-up support for perpetrators, noting that the current unit cost of funding provided by the Department of Health and Human Services ‘provided little room for an individualised approach’.<sup>421</sup> No To Violence highlighted that this meant this type of engagement with men often falls to generic counselling services, which lack specialist training, partner contact and links to family violence risk management processes—leading to potential unintended collusion with violent men.<sup>422</sup> The Centre for Innovative Justice has noted that MBCPs listed the opportunity to support group-based programs with individualised case management as one of their top three priorities.<sup>423</sup>

Bethany Community Support told the Commission that program completion by voluntary participants was more likely if the scope of the service (and related funding) was flexible and able to be expanded to allow for individualised interventions.<sup>424</sup> Kildonan UnitingCare also called for greater capacity to deliver individual counselling sessions to complement group work.<sup>425</sup>

The Commission heard that some individualised intervention was considered important for increasing the safety of women and children by keeping men more engaged in the overall program.<sup>426</sup>

Individual engagement was also raised in the context of perpetrators with complex needs. This is discussed further below.

### **Compliance framework**

The Commission heard that the current compliance framework for providers is not actively monitored by either No To Violence or government funders and does not promote consistency of service delivery between providers.<sup>427</sup> There is no formal registration or accreditation process.<sup>428</sup> This is a problem acknowledged across the men’s behaviour change sector.

For example, Bethany Community Support expressed concern that the lack of an effective compliance framework posed a risk because of the differing levels of accountability which applied in different programs.<sup>429</sup> No To Violence in its submission said that under current arrangements, the community was left to take it on good faith that they could trust all existing programs all of the time to meet or exceed relevant minimum standards.<sup>430</sup>

There was broad consensus from providers and support from the peak body for the introduction of a national accreditation system, noting that more rigorous systems were in place in New Zealand, the United Kingdom and the United States.<sup>431</sup>

Mr Vlasis stated that there have been significant developments in the sector in the last decade (since the standards were set) and that existing requirements may be constraining program effectiveness.<sup>432</sup> No To Violence recommended a fresh set of standards and quality controls.<sup>433</sup>

## Insufficient breadth and diversity of interventions

### Barriers for perpetrators from diverse communities

While there may be common risk factors for family violence, perpetrators are not a homogenous group. Rather, they reflect the diversity of our community. This includes perpetrators who are older, who are Aboriginal or Torres Strait Islander, perpetrators from culturally and linguistically diverse communities, those from regional, rural or remote communities, and those who have disabilities. There are also unique factors present in cases where women use violence, when adolescents use family violence and in LGBTI communities.

The Commission was told that behaviour change programs and other perpetrator interventions must address the needs of these diverse groups<sup>434</sup> and be developed in consultation with them.<sup>435</sup>

While there are a small number of existing programs targeted at men from culturally and linguistically diverse backgrounds, the providers of these programs report that finding qualified staff is a barrier to offering the service.<sup>436</sup> They also report that compliance with the current minimum standards can make the program unsuitable for men whose language, culture, religion and sexuality is not acknowledged in the current course content.<sup>437</sup>

A lack of understanding of the nature of family violence within these diverse communities may mean that perpetrators are discouraged from voluntarily seeking help and providers are not able to respond effectively when they do. When perpetrators are referred to a provider, they may find that the programs are not easily accessible (for example, because of language or mobility barriers) or are not relevant (for example, because of differences in cultural background, sexuality or based on their relationship type).

Although these themes resonated for all of these diverse groups, the Commission was told that each diverse population also experiences additional barriers, specific to their needs and experiences, when accessing perpetrator programs.

### Aboriginal and Torres Strait Islander men

Submissions noted the current paucity of culturally safe, holistic and therapeutic interventions for Aboriginal and Torres Strait Islander men and the inappropriateness of general behaviour change programs for this community. The Victorian Aboriginal Community Services Association Ltd (VACSAL) reported that 'discussions with our family violence staff found that nine out of 10 Aboriginal men using existing behavioural change programs delivered by non-Aboriginal services [say they] do not work for Aboriginal men'.<sup>438</sup>

The Commission heard about the importance of culturally appropriate, Aboriginal community controlled family violence service delivery, which recognises the impact of personal histories of trauma and abuse and promotes pride in, and connection to, culture.<sup>439</sup> The Commission was told that there is a strong preference for time out and healing centres for Aboriginal men, rather than MBCPs. A number of these are outlined in Chapter 26.

Submissions reiterated the importance of a whole-of-family approach to healing trauma.<sup>440</sup> This approach is consistent with the Victorian *Indigenous Family Violence 10 Year Plan, Strong Culture, Strong Peoples and Strong Families: Towards a safer future for Indigenous families and communities*, launched in 2008. However, the Commission heard that culturally appropriate practice is also required in mainstream men's behaviour change programs to better meet the needs of Aboriginal men who choose to use these programs.<sup>441</sup>

A key theme emerging on this issue was the need to fund support organisations to adequately meet current and future demand for programs for Aboriginal and Torres Strait Islander men. This includes investing in a strengthened Aboriginal workforce to design and deliver programs through Aboriginal community controlled organisations.<sup>442</sup>

The Commission was told that further research needs to be undertaken into the impact of MBCPs and to determine whether programs for Aboriginal and Torres Strait Islander men are based on culturally-sound approaches.<sup>443</sup> Documenting effective therapeutic and holistic healing approaches, including those being implemented in healing services and time out services, will help the continued improvement of programs. The Commission notes the strong preference for Aboriginal community controlled organisation providers.

### Culturally and linguistically diverse communities

The Commission heard that access to meaningful behaviour change programs is a significant issue for men from culturally and linguistically diverse communities. If a program is only being run in English without an interpreter or bilingual facilitator, those with limited English skills will be unable to participate in any meaningful way, if at all.

Data on the CALD status of participants in MBCPs is unreliable, as the country of birth of 77 per cent of men accessing an MBCP could not be ascertained. Just three per cent ( $n=562$ ) identified that they were born in a country other than Australia.<sup>444</sup>

Beyond language issues, there is also the question of culturally appropriate practice, acknowledging that Anglo-Australian culture has its own set of norms. While there are some programs that are culturally specific,<sup>445</sup> these are very small in number. We heard that the majority of programs do not take into account the cultural norms, beliefs and identity of men from CALD backgrounds and are therefore less effective in bringing about behaviour change.<sup>446</sup>

The Commission understands that of 35 current MBCPs, two are in languages other than English with a further program in development. These are:

- ▷ Arabic language Men's Family Violence Group (Whittlesea CALD Communities Family Violence Project, InTouch, Kildonan UnitingCare)<sup>447</sup>
- ▷ Vietnamese MBCP (Relationships Australia, Kildonan UnitingCare, InTouch, DHHS, Neighbourhood Justice Centre, Djerriwarrah Health Services)<sup>448</sup>
- ▷ South Asian men's group (Kildonan UnitingCare)<sup>449</sup>

Like other MBCPs, these specialised initiatives cover large geographic areas and have extensive waiting lists. For example, the Kildonan South Asian program runs in Heidelberg; however, participants travel from Broadmeadows, Sunshine and Werribee to attend, waiting on average for two to three months to participate.<sup>450</sup> Several current providers submitted that there was a need for additional investment for facilitators from culturally diverse backgrounds.<sup>451</sup>

### Lesbian, gay, bisexual, transgender and intersex people

As noted in Chapter 30, the family violence system has evolved primarily to respond to male violence against women, usually in intimate partner relationships. Whilst this reflects the gendered nature of the majority of family violence incidents, family violence also affects members of the lesbian, gay, bisexual, transgender and intersex communities.<sup>452</sup>

Currently in Victoria, there is one program specifically for same-sex attracted and bisexual men, which is run by the Victorian AIDS Council.<sup>453</sup> While this program had not previously been supported by government funding, the Victorian Government has recently allocated funding of \$145,000 for the Victorian AIDS Council's Gay Men's Health Centre.<sup>454</sup>

There are no specific programs available for lesbians, transgender or intersex people. While there are no formal eligibility barriers for gay, bisexual, transgender or intersex participants preventing participation in mainstream programs, some content may not be applicable or relevant. In addition, safety may be an issue if other group members are homophobic, transphobic or ignorant of the issues affecting people in LGBTI communities. This can limit options for lesbian, gay, bisexual, transgender and intersex people who wish to address their violent behaviour.

A study conducted by No To Violence in April 2015 found that most MBCP providers considered male same-sex intimate partner violence to be significantly under-reported and that these men often faced barriers to seeking help. In addition, this study found that generalist services may not treat same-sex violence in the same way or may minimise violence between two men, compared to a man and a woman.<sup>455</sup>

No To Violence and Safe Steps Family Violence Response Centre set out the challenge in their joint submission to the Commission:

Creating an LGBTIQ inclusive approach in the family violence and related sectors has implications for many current models, frameworks, the way they are funded, as well as the staffing of services that implement them. This will require a resourced and integrated approach that provides support to all stakeholders.<sup>456</sup>

Small changes were identified that might make services more welcoming and inclusive, such as having a statement on the website that the organisation 'welcomes all gender diverse people and sexual orientations'. Improvements to intake forms so as not to be gender specific by having an alternative for people who are not a fixed binary and removing the requirement for a title were also suggested.<sup>457</sup>

Organisational review of policies and procedures together with the updating of forms and social media tools to ensure that respectful language is used in these forums is a very important starting point. What constitutes respectful language includes ensuring that gender neutral language is used in intake and assessment processes and that clients should always be addressed in all ways by their preferred name and pronoun.<sup>458</sup>

### **Rural, regional and remote communities**

The Commission heard that few behaviour change and other relevant programs exist in rural, regional and remote communities, if at all.<sup>459</sup> It was also reported that there were lengthy waiting lists to attend programs in some areas and in these circumstances, occasionally non-specialised counsellors may be a fall-back option to provide interventions for perpetrators.<sup>460</sup>

### **People with disabilities**

People with intellectual disabilities or acquired brain injuries, which restrict their capacity to learn in a group setting, are currently screened out of behaviour change programs.<sup>461</sup>

The Commission understands that the No To Violence standards are silent on the making of reasonable adjustments, as required under the *Equal Opportunity Act 2010 (Vic)*, to allow people with disabilities to participate in behaviour change programs. Reasonable adjustments could include the use of Auslan interpreting, Easy English materials or additional supports for men with an intellectual disability or other cognitive impairment.

Perpetrator programs may also only be available at centres with no, or limited, accessibility aides (for example, wheelchair accessibility) or other special needs supports.<sup>462</sup> Perpetrator accommodation may also be restricted where the client has a disability.<sup>463</sup>

### **Older people**

The dynamics of elder abuse by family members may involve not only gendered, but also ageist attitudes, and behaviours may require a different approach to changing behaviour compared with heterosexual intimate partner family violence.

Although older men can access mainstream MBCPs, they may also face a range of difficulties, such as where they are suffering from their own health issues (for example, dementia). Where these conditions have cognitive and other behavioural aspects that preclude meaningful participation in MBCPs, these men may not be able to access any appropriate programs.

### **Adolescents who use violence**

The Commission considers programs for adolescents who use family violence in Chapter 23.

## **Programs do not adequately deal with perpetrators who have complex needs**

To increase the efficacy of family violence perpetrator interventions, a review and overhaul of the current system is required. Intervention programs need to be responsive to the complex needs of the wide variety of family violence offenders. In particular, we must improve provision of specialist interventions to those with complex and serious mental, personality, and substance use disorders. There is a clear need for better integration and communication between mental health services, drug and alcohol services, and offence-specific program providers. Reflecting the principles of evidence-based offender treatment, program referral should be based on a comprehensive, integrated and systematised assessment process, with consistent program delivery and integrity across sites, and pathways for perpetrators not catered for in existing programs (e.g., youth, female perpetrators, GLBTI perpetrators).<sup>464</sup>

There may be a range of factors that make existing MBCPs unsuitable for particular groups. In addition, a perpetrator may have individual risk factors that contribute to, or exacerbate, their family violence offending, and may impact on how effective programmatic interventions are in changing their behaviour. The Commission was told that a service response for perpetrators should address behaviour change, mental health issues and difficult living and life circumstances,<sup>465</sup> and that service models should take into account that men with complex needs are less likely to voluntarily engage with family violence services and will not often follow up on referrals.<sup>466</sup>

A service provider, Caraniche, told the Commission:

Drug and alcohol and mental health treatment alone will not reduce family violence but should be assessed and addressed as a key risk factor in family violence treatment for perpetrators.<sup>467</sup>

This section discusses the risk factors most commonly put to the Commission when describing perpetrators with complex needs: mental illness and drug and alcohol abuse. The Commission heard broad agreement about the need to do more to engage perpetrators who present with these issues. Stakeholders told the Commission that the mental health and drug and alcohol sectors remain disconnected from family violence services, with a number outlining suggested improvements, including improving program integration. Regulatory measures targeting alcohol abuse were also suggested. These are discussed below.

### **MBCPs are considered ineffective for men with significant criminogenic factors**

Forensic experts told the Commission that in their view MBCPs are not suitable for perpetrators with significant criminogenic risk factors, including substance abuse problems. The Centre for Forensic Behavioural Science and Forensicare noted that a high percentage of Forensicare patients (who by definition have a serious mental illness that caused their offending), engage in family violence. These agencies submitted that:

Both correctional and NGO programs are ill equipped to treat those very high-risk, high-need offenders with serious mental health and personality problems, and participants are typically excluded from existing groups on these grounds ... Such offenders typically have difficulty engaging in treatment and require considerable pre-group efforts at building internal motivation and treatment readiness, yet both correctional and MBC programs do not have the required resources to deal adequately with complex responsivity issues. For those who do receive a variety of segregated services to meet multiple needs (i.e., offending, substance abuse, and mental health), there is no formal process for collaboration in risk management planning between the standard offender programs and specialist services.<sup>468</sup>

The Centre for Forensic Behavioural Science and Forensicare also submitted that:

... a significant proportion of people who perpetrate family violence have multifaceted needs that are implicated in their violent behaviour. For these individuals, a brief family violence intervention focussing predominantly on gender-related attitudes and accountability – which is the type of service offered by men's change programs – is most unlikely on its own to produce longer term change in behaviour. Rather, intensive intervention programs which target the panoply of relevant risk factors are required to address cases of complex family violence ... both gender-related attitudes and beliefs and broader criminogenic needs must be dealt with ...<sup>469</sup>

Women's Legal Service Victoria suggested that a 'more therapeutic intervention may be required for perpetrators that present with complex and intersectional issues including mental health and drug and alcohol abuse'.<sup>470</sup>

The Commission was also told that existing standards for facilitators were inadequate for this specific cohort. Professor Ogloff gave evidence that the experience of facilitators and level of qualification required were not sufficient for them to identify and accommodate complex issues such as mental health concerns in the cohort of men who attend for an intake assessment.<sup>471</sup> No To Violence told the Commission that this was a question of resourcing:

Program providers want to address alcohol and other drugs, work with other agencies towards mental health issues, and develop individualised plans to coincide with the group process. But, unfortunately, the resources aren't there to have that individualised tailored approach which many of our member agencies would like to have.<sup>472</sup>

#### **Addressing drug and alcohol problems within or alongside MBCPs**

As outlined above, attitudes to alcohol and drug misuse can adversely affect help-seeking behaviour and perpetrator responsibility.

The Commission heard from a number of stakeholders that addressing drug and alcohol problems was an important part of supporting meaningful behaviour change in men.

In light of this, many highlighted the need for MBCPs to increase focus on the management of alcohol and substance abuse. Professor Day stated:

... the link between alcohol use and family violence is increasingly being recognised, suggesting that activities to both monitor and manage alcohol use might be usefully included in behaviour change programs.<sup>473</sup>

Professor Humphreys told the Commission that the association between alcohol and drug use is a complex issue 'but it's one where I don't know that we have necessarily addressed the complexities of that issue well within the family violence field'.<sup>474</sup>

Some stakeholders raised proposals about how to better integrate drug and alcohol treatment with family violence interventions, citing problems with having two different interventions running concurrently. The Commission heard from Dr Caroline Easton, Professor of Forensic Psychology, College of Health Sciences and Technology, Rochester Institute of Technology, about the efficacy of combined alcohol and drug and men's behaviour change programs conducted in the United States:

We found in the randomised trials that were funded by the National Institute of Health here in the United States that we were able to get good treatment outcomes, we were able to see that we could significantly decrease their addiction and aggressive behaviours compared to an equally intensive evidence based addiction treatment. So we used an integrative approach that targeted both the addiction and the aggressive behaviours compared to a control condition that was excellent but that would just target only their substance use ... in two randomised control trials we found that we had excellent treatment outcomes.<sup>475</sup>

Representatives of the drug and alcohol sector agreed they should be more focused on addressing family violence, as they are in a unique position to work with men:

Men do not typically go to child and family services; they do not voluntarily engage in family violence sectors, and they will often not follow up on referrals, so we have been wanting to use our unique opportunity in many ways ... Odyssey House has always strived to work with men, not only in relation to their addictions, but also as partners and as fathers. Many of our clients have children and again there is a great opportunity to talk to them about their fathering role, because they typically do not access other sectors to do that.<sup>476</sup>

The Commission did hear some examples of MBCPs being integrated with drug and alcohol interventions. In Victoria, for example, the MonashLink Community Health Service has an alcohol and drug practitioner working specifically with family violence victims and perpetrators within the service.<sup>477</sup>

In Western Australia, Communicare was funded for a three-year pilot program that combined an MBCP with a drug and alcohol intervention. Groups to support cessation of drug and alcohol consumption ran parallel to the MBCPs, with each man allocated a drug and alcohol worker. The experience from this group was that it was more effective to train men's behaviour change workers in addiction work compared to training drug and alcohol workers on addressing family violence, as the latter found it much more difficult to engage men on the issues of accountability and responsibility.<sup>478</sup>

However in broad terms, the Commission heard that the lack of structured connection between the two sectors is undermining effectiveness:

One of the barriers to responding to family violence in AOD and mental health settings may be a limited understanding of the interconnection between the two issues among workers and limited organisational capacity to build workforce understanding and clinical skill. There is room to increase the understanding of workers in both sectors about the role of the other, through targeted training and workforce development.<sup>479</sup>

Dislocation of MBCPs from the broader service system is discussed further below.

### **Opportunities for expanded justice system interventions**

The Commission also heard proposals to expand justice system interventions as opportunities to maximise the participation of perpetrators in programs to address the factors influencing their violent behaviour.

#### **Intervention order conditions and counselling orders**

In some of the submissions received by the Commission, interest was expressed in expanding the capacity of magistrates to mandate drug and alcohol program attendance or mental health treatment orders as a condition of a family violence intervention order. A member of the public made the case in favour of this approach in the following terms:

Early intervention and access to support services is essential in changing violent behaviour. The underlying issues that lead to family violence such as drug abuse and mental health issues need to be addressed and dealt with at the same time as the civil IVO and criminal charges are pursued. More investigation needs to be done into the possibility of making it a condition of an IVO or CCO that attendance and completion of anger management, drug rehabilitation etc be completed.<sup>480</sup>

In its submission to the Commission, Victoria Police proposed empowering magistrates' courts to have greater scope to tailor conditions in family violence intervention orders to the individual perpetrator:

For example, if a perpetrator presents with a drug and alcohol issue, this should be reflected in the conditions so it can be addressed as a priority alongside family violence. Attaching program completion requirements (similar to a Community Corrections Order) to intervention order conditions would provide an additional layer of accountability while also aiming to address underlying factors contributing to the dynamic.<sup>481</sup>

Judge Gray, in the inquest into the death of Luke Batty, recommended that the system include the capacity to mandate perpetrators' timely access to, and participation in, MBCPs.<sup>482</sup> The recommendation stated that family violence intervention orders:

... are far more likely to be ultimately successful if magistrates are in a position to make orders which combine protective elements, and ... engage applicants and respondents with services (including the compulsory attendance by perpetrators men's behaviour change program) and ... if necessary, with mental health treatment providers.<sup>483</sup>

The Victorian Government has agreed to implement this recommendation, noting that the Department of Justice and Regulation is conducting an evaluation of the Family Violence Court Division of the Magistrates' Court.<sup>484</sup>

In broad terms, there is limited scope to order a person to undertake treatment or programs under a family violence intervention order.<sup>485</sup> Coercive and invasive measures are generally reserved for situations where a person has been found guilty of a criminal offence, rather than flowing from civil orders, where the standard of proof has a lower threshold. Some stakeholders expressed reservations to the Commission about the expansion of compulsory assessment and treatment conditions in the civil context, noting this may create a counterproductive 'quasi-criminal justice framework'.<sup>486</sup>

Currently, the Family Violence Court Division of the Magistrates' Court (Ballarat and Heidelberg) and the Magistrates' Courts sitting at Frankston and Moorabbin have the power under Part 5 of the *Family Violence Protection Act 2008* (Vic) to make a counselling order, requiring a respondent to attend counselling.<sup>487</sup> In order to make a counselling order, the respondent must first attend an assessment and then a hearing is held to determine if a counselling order should be made.<sup>488</sup>

The Family Violence Protection Act provides that the purpose of Part 5 is, among other things, to require a respondent to attend counselling for the purposes of:

- ▷ increasing the respondent's accountability for the violence the respondent has used against a family member; and
- ▷ encouraging the respondent to change the respondent's behaviour.<sup>489</sup>

The Family Violence Protection Act does not define the meaning of 'counselling', but does provide that the Secretary of the Department of Justice and Regulation may approve counselling that the Secretary considers appropriate to address family violence, to be provided by particular persons or bodies for the purposes of a counselling order.<sup>490</sup>

The Secretary has approved counselling for men who have used violence against their female spouses or domestic partners or women with whom they have had an intimate personal relationship. This counselling is to be up to a total of 50 hours and must comprise an initial entry interview and MBCP counselling.<sup>491</sup> It may also include, as required, an intensive response program of individual or group counselling for men assessed as unmotivated or resistant to behavioural change, and individual counselling to address particular issues.<sup>492</sup>

The Secretary has approved Child and Family Services Inc (Ballarat), Kildonan UnitingCare (Heidelberg), Inner South Community Health (Moorabbin), Peninsula Health in the Frankston and Mornington Peninsula areas and Relationships Australia Victoria in the Cranbourne area (Frankston) to provide services to men on counselling orders.<sup>493</sup>

As outlined in Table 18.1, respondent support workers at the Family Violence Court Division are, together with the MBCP provider, involved in overseeing the process by which respondents are mandated to attend MBCPs, including in circumstances where respondents fail to attend the eligibility assessment and/or the MBCP.<sup>494</sup> In addition, the Family Violence Counselling Orders Program Operating Guidelines require that respondent support workers and family violence registrars keep track of the number of counselling orders made, the number of referrals made to MBCP providers, and details about these respondents.<sup>495</sup> They must also record details of the number of non-compliance certificates issued and the number of respondents who failed to attend an MBCP.<sup>496</sup>

Despite programs being mandated, an evaluation of the Family Violence Court Intervention Program indicated there are concerns about inconsistencies in the application of breaches and the low penalties associated with non-compliance with counselling orders.<sup>497</sup> The evaluation stated that the program's mandate is undermined if the message delivered to those who do not comply is that there are no consequences.<sup>498</sup> It also noted that court monitoring can have significant impacts on attendance rates and emphasised the need for meaningful data and active and regular program monitoring and management. The report called for coordinated monitoring by courts, police and service providers, and a system in which respondents who do not attend programs are cross-checked against certificates of non-attendance, and breaches investigated.<sup>499</sup> It also recommended that breaching processes and contract oversight be improved as a matter of urgency and that counselling orders be made conditions of family violence intervention orders so that harsher penalties can apply for non-compliance.<sup>500</sup>

These concerns were echoed in submissions received by the Commission. The Commission heard that low perpetrator accountability can be attributed, in part, to the minimal consequences associated with breaches of orders,<sup>501</sup> as well as the lack of follow-up from magistrates and coordination between MBCPs, magistrates and police.<sup>502</sup> The Commission received submissions that perpetrators would be made more accountable if there were tougher laws around mandating MBCPs and consequences for breaches of court orders,<sup>503</sup> as well as judicial monitoring of respondents' attendance at MBCPs.<sup>504</sup> The Commission also heard there was a need for improved reporting mechanisms and information-sharing protocols.<sup>505</sup>

### Court Integrated Services Program

A number of stakeholders called for the expansion of CISP to be available in the civil context. For example, the Magistrates' Court and Children's Court submitted that the expansion of CISP should be considered so that it can be applied in all family violence cases.<sup>506</sup> This view was also espoused by Deputy Chief Magistrate and Joint Supervising Family Violence Magistrate, Felicity Broughton, who told the Commission that CISP is an important part of the suite of services to support the family violence jurisdiction and accused, and ultimately keep victims safe.<sup>507</sup> Deputy Chief Magistrate Broughton said:

We have certainly had some evidence already of the success of CISP. We see it as an adjunct to our family violence court division model where we have obviously the applicant support worker, the respondent support worker and a family violence registrar. So we have a range of expertise within the court to, I suppose, support the proper understanding and information that we can get to ensure in that circumstance, for instance, if we do bail someone, that it will be safe to do so.<sup>508</sup>

Magistrate Kate Hawkins, Joint Supervising Family Violence Magistrate, of the Magistrates' Court of Victoria also told the Commission of the role that CISP could play in the civil sphere in intervening early with families:

... [T]here's a real role for CISP there to be able to broker and engage him – and often it's her – in some form of drug and alcohol counselling, some form of gambling counselling, usually it's about addiction, so that we are intervening early before it even reaches the criminal justice system. I would much prefer ... to enable a really positive outcome from that court intervention without it going on to the ramifications of criminal charges to the family. That's what a lot of people are really asking for.<sup>509</sup>

In evidence, Mr Rutter and Ms de Lacy described how the scope of the CISP model could be expanded to engage respondents to intervention orders of family violence but stated that the very large number of family violence intervention orders made in Victoria is a logistical hurdle.<sup>510</sup> We also heard from Ms Melinda Walker, an accredited specialist in criminal law, who told us that CISP is 'absolutely stretched' and is not always able to facilitate satisfactory outcomes.<sup>511</sup> She thought that CISP would not be able to incorporate a family violence program due to inadequate resourcing and suggested that all courts should be able to require participation in MBCPs at the first point of contact.<sup>512</sup>

Judge Gray, in the inquest into the death of Luke Batty, recommended that the Victorian Government expand access to the Family Violence Court Division across the state; that CISP be made available at court locations where there is a Family Violence Court Division; and that family violence-trained CISP case managers be present at all courts.<sup>513</sup> The Victorian Government has agreed to implement this recommendation.<sup>514</sup>

## Judicial monitoring

The value of 'swift and certain' approaches to justice was raised during the course of the Commission's hearings. A swift and certain approach to justice is premised on the idea that offenders are more likely to be deterred from offending in circumstances where there is certainty of being apprehended and swift, relatively modest punishment, rather than being faced with a remote and uncertain prospect of a more severe punishment.<sup>515</sup> We heard in evidence that this operates as a reminder for perpetrators that there are definite consequences for their actions.<sup>516</sup> This approach is discussed in detail in Chapter 17.

A related issue is the role of judicial monitoring. The Centre for Innovative Justice report acknowledges the value of ongoing judicial monitoring of family violence perpetrators, noting that many judicial officers understand the impact that leveraging their authority can have on perpetrators.<sup>517</sup> It points to the impact of constant court monitoring of offenders in specialist drug courts, stating that this ensures the offender is motivated to continue with the relevant treatment and understands the seriousness of the orders.<sup>518</sup> In addition, it calls on jurisdictions to explore opportunities for courts to increase ongoing monitoring of perpetrators and measures to hold them to account, including by bringing the perpetrator back before the same judge and employing swift and certain sanctions where offenders have failed to comply with orders.<sup>519</sup>

Offenders can be subject to ongoing judicial monitoring through conditions imposed as part of CCOs, including conditions that stipulate times at which the offender must reappear for review of their compliance.<sup>520</sup> The Commission understands that from July 2014 to May 2015, 16.2 per cent of registered supervised CCOs contained a judicial monitoring condition.<sup>521</sup> The Commission was told that judicial monitoring poses a resourcing issue.<sup>522</sup>

The Commission also heard of mandatory sobriety interventions in the United States which adopt a swift and certain approach to compliance with court orders. Examples cited were the South Dakota 24/7 Sobriety Program, and the Hawaii HOPE program, which reduced drug and alcohol misuse and had associated benefits in reducing other offending behaviour (including family violence).<sup>523</sup>

## Fragmented system and service response

Notwithstanding an increasing policy focus on perpetrators, according to one commentator, 'a significant gap exists in our collective response'.<sup>524</sup> No To Violence told the Commission that the inability to track perpetrator interactions with the family violence system created opportunities for men to opt out and be 'lost' to the system.<sup>525</sup> This can occur at a number of contact points, from the police referral through to the contact made by an MBCP. This makes it difficult for organisations and the sector to hold men accountable for their actions, making the system feel 'optional' to perpetrators.<sup>526</sup>

Judge Eugene Hyman, a retired Judge of the Superior Court of California, told the Commission:

In order for restraining orders and protection orders to be effective, they need to be enforced and their need to be real consequences when there is a breach. There needs to be consistency in approach by judges, police officers and prosecutors. Effective monitoring and enforcement of these orders requires each part of the system to be committed and working together. For instance, police officers are unlikely to put effort into investigating breaches of restraining orders if they think the matter will likely be dropped further up the line.<sup>527</sup>

ANROWS has identified that a key area for future research will be a thorough analysis and evaluation of the effectiveness of systems linkages, in particular:

... linkages between perpetrator interventions including other prevention, intervention and tertiary responses (such as criminal, civil, child protection and family law proceedings); and collaborative efforts to effectively stop violence or enable a perpetrator to engage with behaviour change (for example, housing, employment or financial services; services addressing matters such as health, mental health, drug and alcohol; and case management).<sup>528</sup>

## Pathways into programs are convoluted and inequitable

It is estimated that a majority of referrals to MBCPs come via third parties including police, Child Protection and health services.<sup>529</sup> To improve the management of these referrals, in 2009, the then Department of Human Services developed a service intake model and practice guide for MBCP providers to 'streamline intake work in ways that ensure timely and proactive engagement of men, and enhanced assessment and referral processes' noting that 'timely and appropriate responses to men who use violence and controlling behaviour are seen as a key component of an integrated family violence system'.<sup>530</sup>

The model requires an MCBP provider to respond to an active referral as soon as practicable, or at the latest, within three to five working days. If the man is willing to engage, an appointment for assessment should be made within a further ten working days.<sup>531</sup> These time frames are similar to those prescribed in the No To Violence minimum standards, which sets a response time of a week, but preferably within 48 hours.<sup>532</sup>

No To Violence told the Commission that the current referral process was too fragmented, and recommended the development of a single statewide entry point with a centralised database.<sup>533</sup> It argued this would ensure a more sophisticated intake process and would improve the ability to track men through the system. We discuss this in Chapter 13.

Ensuring clear referral pathways for those referred by the courts was also identified as an important issue. As noted above, currently four magistrates' courts are empowered to make counselling orders for eligible men in particular catchment areas. The Commission was advised that courts with specialist family violence services (Frankston, Melbourne, Werribee and Sunshine) had established relationships with voluntary MBCPs,<sup>534</sup> as did courts that ran the CISP and the CREDIT/Bail support program—a case-management service for accused persons on bail or summons.<sup>535</sup>

An evaluation of Ballarat and Heidelberg Magistrates' Courts found referral pathways into MBCPs were convoluted, time consuming and confusing, and that responsibilities are delegated to court, staff, magistrates, respondent support workers and service providers.<sup>536</sup> Service providers also identified deficiencies with the process of referring men to MBCPs, including that in certain circumstances, men may be inappropriately included in, or excluded from, the program, because there is no therapeutic assessment process. In addition, service providers noted that the time from the commencement of assessment to the entry into the Family Violence Court Intervention Program can be drawn out, increasing the likelihood that men will disengage. It was recommended that the assessment and referral process be streamlined, and that the assessment interview take place before the family violence intervention order application so that the results are available for the magistrate to consider during the application.<sup>537</sup>

The Commission's proposals in relation to intake processes for all family violence services are set out in Chapter 13.

## Funding and demand pressures

Funding for MBCPs comes from a range of sources: the Department of Health and Human Services funds voluntary MBCPs, the Magistrates' Court of Victoria funds court mandated MBCPs, and the Department of Justice and Regulation funds MBCPs in the correctional setting.<sup>538</sup>

### Funding for MBCPs

DHHS is the major provider of funding for MBCPs which is one element of the men's family violence allocation, and includes funding for the Men's Referral Service and the Enhanced Services Intake. DHHS advised that in 2013–14, \$4.9 million was allocated for men's family violence services, comprising:

- ▷ \$3.8 million for MBCPs and the ESI<sup>539</sup>
- ▷ \$0.9 million for Men's Referral Services
- ▷ \$0.2 million for adolescent family violence, although this was funded separately from 2014–15.<sup>540</sup>

Men's family violence funding remained relatively constant until 2013–14 at which time there was a 16 per cent funding increase.<sup>541</sup> This was followed by a further increase as the overall funding grew to \$5.64 million in 2014–15.

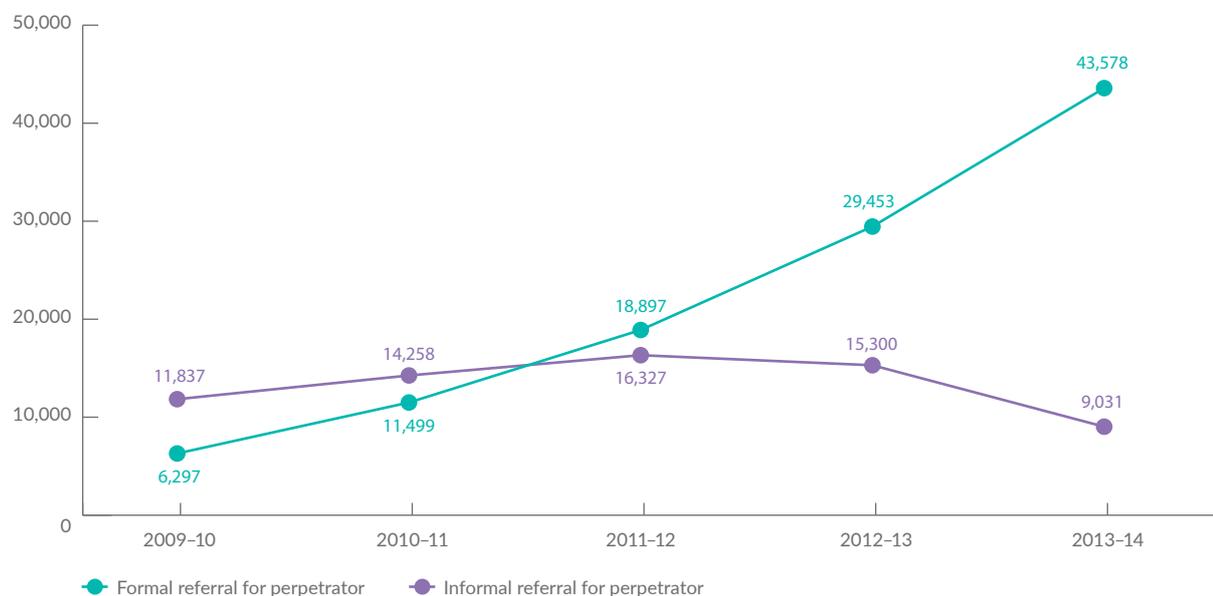
In 2015–16, the Victorian Government allocated an additional \$1 million in funding to men’s family violence services, some of which will be used to provide an additional 300 voluntary places for MBCPs; in addition, \$0.5 million was allocated for extra court-mandated MBCPs. An additional \$2 million over two years has also been allocated to Corrections Victoria to ‘expand their services to provide 64 men’s behaviour change programs and assessment screenings for up to 516 offenders on mandated community correction orders.’<sup>542</sup> The Commission was told that Corrections Victoria has used this funding to contract the delivery of MBCPs for offenders both in the community and in prisons.<sup>543</sup>

While this additional funding is time-limited, the Commission notes the Victorian Government has indicated that ‘the 2016–17 budget will respond to the recommendations of this Commission.’<sup>544</sup>

### Demand for voluntary MBCPs

The Commission received evidence of a significant increase in demand for MBCPs from Victoria Police, courts and others. Victoria Police has driven an almost seven-fold increase in formal referrals for perpetrators to services,<sup>545</sup> which has been attributed to a cultural change of improved responsiveness to family violence incidents.<sup>546</sup> There is evidence that Victoria Police is increasingly making formal referrals rather relying on perpetrators to make contact with providers themselves. This is reflected in Figure 18.1.

Figure 18.1 Total referrals for perpetrators made by Victoria Police, 2009–10 to 2013–14



Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Table 16: Total referrals made following a family incident—Victoria Police, July 2009 to June 2014, 40, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

### Capacity for court-ordered MBCPs

As discussed earlier in this chapter, the magistrates’ courts can refer men to MBCPs through counselling orders in some court locations, conditions on family violence intervention orders, conditions on community correction orders and informal referrals. It is not known how many of these referrals are made in total.

In 2014–15, 249 orders were made by magistrates’ courts where referral to a voluntary MBCP was included.<sup>547</sup>

In 2013, No To Violence reported that magistrates’ courts were referring approximately 900 to 1000 men per year to the Men’s Referral Service (some of whom may not have been referred to a voluntary MBCP) and hundreds more to local or regional programs.<sup>548</sup> These referrals form part of the demand for voluntary MBCP places funded by DHHS.<sup>549</sup> There is no data about the proportion of these referrals that resulted in men being assessed as eligible for an MBCP placement.

In relation to mandated MBCPs, the Magistrates’ Court of Victoria advised the Commission that there were 329 places for mandated MBCP referrals in 2014–15, including 109 introduced for orders made at Frankston and Moorabbin Magistrates’ Courts.<sup>550</sup>

Table 18.2 shows that between 2010–11 and 2013–14, the number of MBCP places for orders issued by Heidelberg and Ballarat courts remained the same (220), however the number of orders issued increased from 116 (in 2010–11) to 278 (in 2013–14). The Commission notes that while funding for 109 places was provided in 2014–15 to meet demand from orders issued at the Frankston and Moorabbin Magistrates' Courts, 109 orders had already been made by May 2015.<sup>551</sup>

Table 18.2 Number of counselling orders compared to number of funded places in mandated MBCPs

	2010–11		2011–12		2012–13		2013–14	
	Orders	Funded places						
Heidelberg	48	120	95	120	59	120	171	120
Ballarat	68	100	101	100	91	100	107	100
<b>Total</b>	<b>116</b>	<b>220</b>	<b>196</b>	<b>220</b>	<b>150</b>	<b>220</b>	<b>278</b>	<b>220</b>

Source: Based on Magistrates' Court of Victoria, 'MCV\_MBCP places' provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015; Magistrates' Court of Victoria, 'Q27 Counselling orders made', provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

### Adequacy of funding to meet demand

Without comprehensive data about referral outcomes to demonstrate the number of eligible men requesting placement in an MBCP, it is difficult to ascertain the adequacy of funded capacity to meet demand. Nonetheless, the evidence and submissions demonstrate a system under significant pressure.

Between 2009–10 and 2013–14 the number of police formal (L17) referrals for perpetrators grew by 592 per cent<sup>552</sup> and the number of clients accessing voluntary men's behaviour change programs grew by 447 per cent.<sup>553</sup>

No To Violence estimated that of the 13,000 police referrals on average each year to both the weekday and weekend service, fewer than half of these men are actually contacted by an intake worker.<sup>554</sup> MBCP provider and intake service, Child and Family Services Ballarat, told the Commission that of the 700 police referrals it received each year it had contact with around 350 men.<sup>555</sup>

The Commission heard that as at March 2015, approximately 1000 men were waiting to participate in programs. Of these, approximately 300 had been assessed as suitable for participation but were in a position of waiting for 'a period of a few weeks to unfortunately up to several months to be able to start the program proper'.<sup>556</sup> Extensive waiting lists can deter third parties from referring to agencies, with the Men's Referral Service and No To Violence joint submission noting:

When large program providers close their books or have a wait time of several months before they can respond to new referrals, family violence systems agencies – particularly Magistrates and child protection practitioners – temporarily stop referring to them.<sup>557</sup>

Despite the fact that some offenders are compelled to participate in MBCPs as a condition of their community correction order, the Commission heard evidence that there was 'significant and regular feedback' from the court that these offenders were unable to get into programs due to lack of available places, leading to a significant waiting list.<sup>558</sup> It was also noted that those who were voluntarily seeking programs were particularly affected by waiting lists, as places were often prioritised for court-mandated participants, creating a missed opportunity to engage with men who were actively seeking help and expressing a willingness to change.<sup>559</sup>

The No To Violence and Men's Referral Service submission described the impact of waiting lists as follows:

Significant wait times result in men losing motivation and opting out of the service system, defeating the purpose for referring these men to a men's behaviour change program in the first instance. Men's internal motivations to participate in a service are very fickle, and can easily evaporate with an extended wait. Furthermore, men who are mandated or strongly encouraged by a statutory authority to attend a program are given contradictory messages about the unacceptability of their behaviour when they need to wait many months to commence the program they are referred to.<sup>560</sup>

## Workforce issues

The qualifications and experience required for the positions of facilitators, supervisors and contact workers are set out in the No To Violence minimum standards.<sup>561</sup> There are three levels of facilitators, with the junior level requiring a person to have observed 10 sessions of group work, through to senior positions requiring two three years' experience providing group therapy, or counselling and formal qualifications. Facilitators and contact workers must attend at least four professional development activities a year and at least two of these must be seminars or forums run by No To Violence.<sup>562</sup>

Formal qualifications are only required for level 3 facilitators, supervisors and those staff who conduct an assessment of men seeking to enter a program. Either a four-year degree in a relevant discipline (for example, social work, psychology, community welfare) or a Graduate Certificate of Social Science (Male Family Violence—Group Facilitation) is required; however, other qualifications and experience may be deemed by the No To Violence Management Committee to be equivalent and sufficient.<sup>563</sup>

The Graduate Certificate of Social Science (Male Family Violence) is exclusively offered by the Swinburne University of Technology<sup>564</sup> at the University's Melbourne CBD campus: making 'completion challenging and onerous for regional service providers and staff'.<sup>565</sup> The information and application pack for 2016 indicates that staff members employed by community agencies funded by DHHS to provide men's family violence services may be eligible for a funded place in the course.<sup>566</sup>

On 24 February 2016 the Victorian Government announced \$100,000 in funding to support professional training for MBCP facilitators.<sup>567</sup>

Providers also noted a lack of resources available to train existing workers to more senior levels. This was particularly the case in regional and rural areas with providers citing the need to travel to Melbourne for training adding costs and lost time.<sup>568</sup>

There is further discussion of industry planning and workforce issues in Chapter 40, including for people working in perpetrator programs.

## Regulatory measures to reduce alcohol supply

A number of submissions, and evidence heard by the Commission, highlighted the relationship between alcohol-related harms, including the perpetration of family violence, and the supply of alcohol.

Associate Professor Miller, told the Commission that evidence from a Victorian context shows a steady increase in family violence rates associated with increases in the number and density of liquor licences, especially in relation to packaged liquor outlets:

Similarly, the rate of ambulance attendances at domestic violence cases is significantly and consistently related to liquor outlet density. The strongest evidence, based on the best data, comes from Western Australia and the work by Tanya Chikritzhs and colleagues, who have reported that the number of off-site outlets predicts total assaults and domestic violence cases in the community. For every 10,000 additional litres of pure alcohol sold by an off-site outlet, the risk of violence on residential premises increased by 26%.<sup>569</sup>

In evidence, Associate Professor Miller provided an overview of Dr Michael Livingston's longitudinal analysis of the relationship between alcohol outlet density and domestic violence.<sup>570</sup> The study, which looked at data for postcodes within Melbourne for the years 1996 to 2005, found a positive association between the level of family violence incidents where police were called, and the number of liquor venues and licences in various Melbourne suburbs.<sup>571</sup> Victoria Police submitted that while packaged liquor outlets comprise about 10 per cent of the total number of licensed premises, they supply about 75 to 78 per cent of alcohol consumed in the community.<sup>572</sup> Research published in 2015 also highlights that outlets in disadvantaged areas sell cheaper alcohol, so harm associated with alcohol use, which may include family violence, disproportionately affects disadvantaged people.<sup>573</sup>

Associate Professor Miller recommended to the Commission that a series of measures, including putting a freeze on the number of packaged liquor outlets, reducing the length of drinking sessions and the level of alcohol consumed (through measures like pub trading hours and price increases), and increasing the cost of alcohol could reduce levels of family violence.<sup>574</sup>

The National Alliance for Action on Alcohol also advocated for tighter regulation of alcohol supply, submitting that '[r]estricting the physical availability of alcohol should be a central component of an overall strategy to reduce alcohol-related FDV [family and domestic violence]'.<sup>575</sup> The Foundation for Alcohol Research and Education (FARE) submitted that:

Decreasing the availability of alcohol in communities reduces and sustains the reduction in alcohol harms over time. This effect can extend to reductions in the incidence of family violence and child maltreatment. Governments can reduce the availability of alcohol through tighter outlet density controls and interventions and reduced trading hours for all licence types.<sup>576</sup>

Other submissions recommended similar measures including freezes on the granting of new licences, limiting off-licence trading hours, and banning alcohol advertising and promotions.<sup>577</sup> Associate Professor Miller raised with the Commission the potential of increasing the price of alcohol as a means of reducing family violence:

The introduction of a 10% increase in average minimum price for alcohol has been associated with a reduction of 10.4% of all assaults (similar rates for family violence and all other forms) in British Columbia, Canada. Limiting alcohol sales through evidence-based public health measures will reduce the incidence of family violence significantly, most likely by 10–20%, within a short timeframe.<sup>578</sup>

Associate Professor Miller also suggested to the Commission that 'dry zones' are worth considering in Victoria. There are legislative provisions in both Western Australia and the Northern Territory that make specific premises, including individual houses, dry zones.<sup>579</sup>

An individual can go to the Liquor Licensing Board and ask for their house to be designated a dry zone, so that alcohol is not allowed on that premises, you are not allowed to enter those premises if you are affected by alcohol. This has been used widely in response to certain domestic violence cases. In fact, in the Northern Territory they almost treat it as a default mechanism when somebody is indicated as both family violence and alcohol—when alcohol is mentioned in those cases that is almost their default. This is anecdote from the police responsible up there, but certainly that is a pretty standard response.<sup>580</sup>

Organisations working on the prevention of violence against women also recognise the need to address alcohol supply in the context of broader primary prevention strategies. The shared framework for the primary prevention of violence against women (endorsed by Our Watch, ANROWS and VicHealth) includes the improvement of the regulation of alcohol as a key action to address violence against women, based on population-level research which suggests the density of packaged liquor premises is associated with increases in family violence.<sup>581</sup>

The framework reports that regulatory initiatives to reduce the density of alcohol outlets (through taxation, rationing and regulating trading hours) are considered to be effective, although 'optimally should be implemented alongside other interventions addressing normative support for violence against women'.<sup>582</sup>

The framework recommends addressing the intersection between social norms relating to alcohol and gender by ensuring that violence against women is captured in policy debates when considering the 'promotion and physical and economic availability of alcohol'.<sup>583</sup> It also recommends challenging:

... drinking cultures that emphasise male conquest[s] and aggression, and social norms and attitudes that position men's drinking as an excuse for violence, or women's drinking as a form of victim-blaming.<sup>584</sup>

Ms Cate Carr, Executive Director, Office of Liquor, Gaming and Racing, Department of Justice and Regulation, provided a statement and gave evidence about the role of state government entities in the regulation of liquor.<sup>585</sup> While the Victorian Commission for Gaming and Liquor Regulation is responsible for the licensing of venues that sell liquor, and for monitoring their compliance with licence requirements, the Department of Justice and Regulation is responsible for providing policy advice to the Minister for Consumer Affairs, Gaming and Liquor Regulation.<sup>586</sup> This includes responsibility for the operation of the *Liquor Control Reform Act 1998* (Vic). The objects of the Liquor Control Reform Act seek, among other things, to achieve a balance between facilitating diversity in the range of licensed venues in the community, and minimising alcohol-related harms.<sup>587</sup>

In her statement, Ms Carr said the Victorian Government has decided to conduct a major review of the Liquor Control Reform Act to assess the current balance between culture and the need to reduce alcohol-related harm, particularly street violence and family violence.<sup>588</sup> The review will be conducted with the input of the Liquor Control Advisory Council and a number of working groups of that Council including the Targeted Harm Reduction Strategies Working Group.<sup>589</sup> As part of the review, the Working Group has been asked to advise on what alcohol-related harm reduction strategies could be trialled in Victoria and to identify trial areas based on risks of alcohol-related family violence harms.<sup>590</sup>

## The way forward

While promoting the safety and welfare of victims of family violence should remain paramount, it is clear that the scourge of family violence will not be addressed without a sustained focus on keeping perpetrators accountable. This focus needs to occur across all measures to address family violence: primary prevention, risk assessment and management, incident response, judicial decision-making and oversight and programmatic interventions. It is only through all aspects of the system acting together in a mutually reinforcing way that we will be effective in ensuring perpetrators do not engage in abusive and violent behaviour.

Existing loopholes that implicitly condone the actions of perpetrators by allowing them to feel vindicated or victimised by the system, or that place the burden of risk management on victims, need to be closed. At present, perpetrators may engage with a range of services and agencies that seek to address the factors that give rise to their abusive conduct. In our view this currently occurs without adequate analysis of what strategies are effective in holding perpetrators to account, and in what circumstances. It also occurs in a disjointed and uncoordinated way, creating unnecessary siloes between services, and the risk that opportunities to engage effectively with perpetrators, or to manage the risks they present, will be missed. Our approach to perpetrators needs to move from one that involves a fragmented and episodic interaction with services and instead ensures engagement with perpetrators in more consistent and constructive ways.

Having a clear line of sight on perpetrators requires us to know what we are looking at. At the moment, we have a very limited understanding of perpetrators as a cohort. While some analysis conducted for the Commission provided some insight into the demographic trends for perpetrators and recidivists, more sophisticated mapping is required to inform our service response.

For some perpetrators, the prospect of wholesale behaviour change is unrealistic. Many will continue to present an unacceptable risk to their victims. These high-risk and recidivist offenders require coordinated and robust attention from police, courts and corrections agencies.

However, for others, gaining insight and awareness about their conduct and the impact it is having on their families, particularly their children, may help them to change their behaviour. For some, this will involve stopping their use of violence altogether; for others it may result in less frequent or serious offending. We cannot surrender to the notion that perpetrators will not change or accept that marginal improvement is better than none, without fully exploring and exhausting ideas that can make a genuine difference in the lives of women and children subjected to violence. However, we also need to ensure the system is realistic in acknowledging that changing entrenched beliefs or patterns of behaviour, which have been reinforced over a lifetime, may not be achievable for some.

The most common programmatic intervention for perpetrators is a referral to a men's behaviour change program. We do not know whether and to what extent existing programs are successful in changing an individual's behaviour and attitudes or in keeping victims safe. What we do know is that the current arrangements for men's behaviour change programs in Victoria are inadequate: there are insufficient programs to cater to all men who are referred to them; there is little or no follow-up to monitor someone's completion of a program; there is inadequate oversight of the quality of programs and providers or for assessing the appropriateness of the methodologies used; and existing programs do not cater for different cohorts of perpetrators, and are not designed to respond to those perpetrators with significant criminogenic factors such as serious mental illness or substance abuse. The system therefore imposes an unfair burden on MBCP providers to achieve outcomes that they are neither equipped nor supported to achieve.

We know that addressing gender attitudes must be at the core of most perpetrator interventions. We also know that at an individual level, factors such as exposure to childhood violence, mental illness and drug and alcohol misuse can fuel or exacerbate family violence. This fact does not in any way minimise or excuse the offending, but does need to inform the intervention for that particular perpetrator and the factors for which they need to take responsibility. It is clear that a 'one-size-fits-all' approach to dealing with perpetrators is failing victims by not recognising the unique and personal dynamics of their families.

## Collective responsibility for perpetrators

The Commission agrees that improving perpetrator interventions should go beyond the mere joining-up of services. What is also required is a sense of collective responsibility across all relevant government departments and agencies, not just specialist services. Our approach must incorporate streamlined and comprehensive risk assessment and management practices, and intake and referral processes. The Commission's proposals in these areas are set out elsewhere in this report.

While government and non-government organisations working to address family violence strive to achieve perpetrator accountability, it is not clear that they are in fact working to a common objective or according to a common set of principles. It is important that they do.

In the Commission's view, the concept of perpetrator accountability entails:

- ▷ understanding and responding to the needs and experiences of victims, and their views about the outcomes they are seeking to achieve
- ▷ prioritising women and children's safety through effective and ongoing risk assessment and management mechanisms
- ▷ promoting the taking of responsibility by perpetrators for their actions
- ▷ providing a suite of options to assist perpetrators to gain insight and awareness about their actions, and to change their behaviour, with such options tailored to the risk profile of the perpetrator
- ▷ having a strong set of laws and legal processes that incorporate clear consequences for abusive and violent behaviour and failure to comply with court orders and sanctions
- ▷ fostering collective responsibility among government and non-government agencies, the community and individuals for denouncing perpetrators' use of violence and expecting and supporting them to cease being violent.

In order to achieve perpetrator accountability, the system must therefore comprise the following elements:

- ▷ a defined set of roles and responsibilities for all government and non-government agencies and service providers that have contact with perpetrators of family violence
- ▷ a consistent approach to perpetrator risk assessment and management (such as through the revised CRAF proposed by the Commission in Chapter 6) applied across all sectors and service providers working with perpetrators of family violence that informs the best response, intervention, or mix of interventions for an individual perpetrator
- ▷ a suite of interventions necessary to respond to the risks posed by and diverse needs of all perpetrators of all forms of family violence, including justice-system responses and community-based responses
- ▷ interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, addressing criminogenic factors, reducing re-offending and meeting the needs of victims, and which are subject to an effective compliance and oversight scheme
- ▷ an intake and referral mechanism that ensures there is timely access to perpetrator interventions, and has adequate oversight to ensure perpetrators do not disappear from view
- ▷ calculation of current and future demand for all perpetrator interventions, to ensure that agencies, services and programs are sufficiently funded to meet demand
- ▷ a program of data collection, and evaluation of perpetrator interventions and programs to determine whether they are effective, recognising that such evaluations must incorporate the victim's assessment of the outcomes for her safety.

## Recommendation 85

The Victorian Government [within 12 months]:

- ▷ map the roles and responsibilities of all government and non-government agencies and service providers that have contact with perpetrators of family violence
- ▷ confirm the principles that should inform the programs, services and initiatives required to respond to perpetrators of family violence who pose a high, medium and low risk to victims.

## Improving and expanding current interventions

### Making sure interventions work

Changing the entrenched views and behaviours of perpetrators represents one of the key opportunities to stop the continuation or escalation of family violence.

Despite some evaluations that suggest that MBCPs lead to some improved outcomes, their true effectiveness remains contested and relatively unknown. While we heard some positive stories about MBCPs, in particular about the role they can play in risk management, we were concerned to hear that a number of victims reported that MBCPs made little difference in preventing re-offending. We were particularly concerned to hear stories of controlling or manipulative behaviours being refined or reinforced for perpetrators through contact with other program participants.

The Commission believes we need to invest more time, money and effort in investigating which interventions are effective in achieving behaviour change, acknowledging that there is no 'one-size-fits-all' approach. This involves developing a more sophisticated understanding of the types of perpetrator interventions required to respond to the different risk profiles of family violence perpetrators, and the diversity of people who use family violence. This knowledge can then be applied by courts and service providers to ensure people are matched to the right form of intervention.

It also involves broadening our horizon beyond existing MBCPs to consider other clinical models that have been proven to be effective for general criminal offending but are largely untested in the family violence context, such as cognitive behaviour therapy and strength-based programs. Having a loving relationship with children is an important motivator for perpetrators and this can be leveraged in programmatic interventions, such as programs for fathers who perpetrate family violence.

The research to be undertaken as part of ANROWS' Perpetrator Interventions Research Stream will contribute significantly to our understanding of these issues.

In the meantime, we need to draw on our existing knowledge base, to the extent possible, in designing perpetrator interventions. This means drawing on, and combining, the strongest elements of both the existing gender-based approaches and the more general criminological approaches, providing a suite of options to cater to the different types of family violence and different contexts in which family violence can occur.

It is also critical that all programs and interventions funded by the Victorian Government are subject to ongoing review, analysis and evaluation to ensure they are contributing to the objectives of victim safety and perpetrator accountability.

### **Broadening the range of interventions**

We know that generalist MBCPs do not work for everyone. Some stakeholders described an inflexible, outdated, 'one-size-fits-all' programmatic response that is not keeping pace with international best practice and growing demand. The Commission also heard of the dislocation of MBCPs from allied services—including drug, alcohol and mental health services—that work with perpetrators. The existing MBCP model is group-based and is not designed or resourced to work with participants individually.

For those perpetrators who are screened out as ineligible to participate in a men's behaviour change program due to the complexity of their needs, there is little else available to specifically address their family violence offending.

Specific groups (such as Aboriginal and Torres Strait Islander peoples or people from CALD communities) may find generalist programs alienating or irrelevant to their personal circumstances and benefit from culturally sensitive programs that reflect the dynamics and realities of their respective communities. There are also very few programs that specifically address non-intimate partner violence, for example elder abuse by adult children. Programs for women who have used violence must address the circumstances which have given rise to the offending, notably past and current family violence victimisation.

Effort and investment needs to be applied to remedying existing gaps in our programmatic response in the short term; however, this should occur alongside dedicated funding for evaluation to inform ongoing refinement to how programs are designed and delivered over the long term.

As discussed earlier in this chapter, the Commission heard that different disciplines and conceptual understandings of family violence have hindered a truly effective and integrated approach to reducing violence against women. There is certainly evidence that this has contributed to a fragmented and siloed approach to perpetrator programs in Victoria.

Proponents of different views acknowledge that more needs to be done to provide a suite of programs and interventions that target an individual perpetrator's particular risks and needs, and that there is potential in drawing on the strength of each approach to develop interventions that more effectively address the risk profiles of perpetrators. The Commission was encouraged by the level of willingness and commitment by those working in a number of disciplines and sectors to work more effectively with perpetrators of family violence. Those working in men's behaviour change programs recognise the need for their programs to be supported and supplemented by other approaches. Those working in the area of offender management generally acknowledge that more needs to be done to understand the particular nature and dynamics of family violence, and for offender programs to be adapted to respond to family violence. There is a general acknowledgement that responses to perpetrators need to include interventions that address individual factors such as alcohol and drug misuse and mental illness, where these are contributing to risk. Certainly, these were the types of interventions victims of family violence told us were sorely needed.

To the extent that disagreements about how best to respond to perpetrators persist, this may reflect fragmentation among services and organisations, and limited means to advance discussion through testing what works and why. There must therefore be a greater focus on ensuring that opportunities and resources exist to allow those working in this field to communicate, cooperate and share ideas; to design, develop and test new approaches; and to attract and retain the best expertise. Working towards these goals is the best way to ensure that an approach to perpetrators is evidence based, advanced and cohesive.

Closer working arrangements between men's behaviour change programs, and forensic, mental health and drug and alcohol services, is needed so that programs have the best prospects for success. At a very basic level MBCP providers need to better understand substance misuse and mental illness, and drug and alcohol and mental health practitioners need to better understand family violence. We are also seeing positive developments in shared programming across drug and alcohol services and men's behaviour change programs in the UK and Western Australia. These are models that we can, and should, build on in Victoria.

Men's behaviour change programs should be sufficiently resourced to allow for implementation of individual-based tailored interventions for men with a diverse range of needs.

Building the capacity of workers across the mainstream service system to work with men who use violence should also inform the workforce development strategy recommended in Chapter 40.

The Commission proposes that the development of future perpetrator accountability measures be informed by input from experts who have different experience and perspectives on responding to perpetrators of family violence. To this end we propose that the Victorian Government convene an expert advisory committee to assist it to articulate the spectrum of interventions that will be required to ensure that we have the best chance of intervening effectively to hold perpetrators to account. This process should be informed by the research being conducted as part of ANROWS' Perpetrator Interventions Research Stream.

The Victorian Government should draw on advice from this committee to trial and evaluate additional interventions for perpetrators, with a specific focus on individual case management; programs for perpetrators from diverse communities and for those with complex needs; programs that focus on assisting perpetrators to understand the effects of violence on their children and partners; and practice models that build coordinated interventions, include cross-sector workforce development between the men's behaviour change, mental health, drug and alcohol and forensic sectors.

## Recommendation 86

The Victorian Government convene a committee of experts on perpetrator interventions and behaviour change programs [within 12 months] to advise the government on the spectrum of programs, services and initiatives that should be available in Victoria—in the justice system and in the community—to respond to all perpetrators across varying forms and risk levels of family violence. The committee should consider men’s behaviour change programs, clinical models such as cognitive behaviour therapy, strengths-based programs and fathering-specific models, online programs, and services for perpetrators from diverse communities. The expert advisory committee should consist of members with expertise in a variety of disciplines and practice approaches and with experience in working directly with perpetrators and victims of family violence, including those from diverse communities.

## Recommendation 87

The Victorian Government, subject to advice from the recommended expert advisory committee and relevant ANROWS (Australia’s National Organisation for Women’s Safety) research, trial and evaluate interventions for perpetrators [within three years] that:

- ▷ provide individual case management where required
- ▷ deliver programs to perpetrators from diverse communities and to those with complex needs
- ▷ focus on helping perpetrators understand the effects of violence on their children and to become better fathers
- ▷ adopt practice models that build coordinated interventions, including cross-sector workforce development between the men’s behaviour change, mental health, drug and alcohol and forensic sectors.

## Recommendation 88

The Victorian Government provide dedicated funding for future perpetrator programs. These should include evaluation studies to establish longer term effectiveness and assist in improving program design in the long term [within three years].

### Court-related interventions

The courts have particular scope to influence the types of programs and services available to perpetrators. In the criminal jurisdiction, courts have broad scope to compel offenders to participate in relevant programs.

As outlined in Chapter 17, the Commission sees considerable merit in swift and certain approaches to justice as a means of effecting greater compliance with court orders, sentences and participation in mandated programs. The Commission acknowledges there are complexities in applying methods that are in use in the US given legal and procedural differences. We recommend therefore that the Sentencing Advisory Council investigate options for incorporating such an approach to family violence offenders within Victoria’s sentencing regime, including through the use of judicial monitoring techniques.

In the civil context, magistrates' courts currently have very limited powers to direct perpetrators to engage with programs or services that may reduce their offending and assist them to gain insight into the impact of their violence. Only some magistrates' courts are empowered to make counselling orders for assessment and attendance at MBCPs, creating 'postcode justice' and inconsistency in the way perpetrators are managed. Family violence is experienced statewide; therefore, we consider that magistrates in all headquarter courts should be able to make counselling orders. In Chapter 16, the Commission recommends that all headquarter magistrates' courts in Victoria be empowered to mandate attendance in perpetrator programs. The implementation of this recommendation will require a significantly expanded range of approved program providers.

In this context, the Commission recommends that the Secretary of the Department of Justice and Regulation broaden the range of approved services that a perpetrator may be required to engage with pursuant to a counselling order. Services with expertise in the interplay between family violence and drug and alcohol misuse or mental illness may be beneficial for some perpetrators. Similarly programs that focus on fathering are likely to be beneficial for some perpetrators. We consider that mandating attendance at an expanded range of programs is likely to be possible within the existing legislative framework, provided the purpose of the counselling remains within the scope of the statutory objectives of Part 5 of the Family Violence Protection Act.

The Commission is concerned that greater use of counselling orders by the courts be matched by processes to monitor a perpetrator's attendance at, and completion of, relevant programs. While respondent support workers, together with MBCP providers, are required to monitor the attendance of respondents at MBCPs, the Commission notes the concerns raised about inconsistencies in the application of breaches, the minimal consequences associated with non-compliance and the lack of follow-up from magistrates and coordination between MBCPs, magistrates and police. Without robust reporting mechanisms, the value and potential of mandating attendance at perpetrator programs is diminished. The Commission therefore proposes that the Magistrates' Court work with the providers of MBCPs and the Victorian Government to develop an efficient process to monitor attendance at, and outcomes of, mandated programs, and in particular that this include feedback from victims through partner contact arrangements. While it may be desirable for some perpetrators to be brought back before a magistrate as part of the monitoring and reporting processes, in other cases it may be sufficient for court staff to undertake these functions.

In relation to calls for CISP to be more widely available in family violence matters, the Commission notes that the government has indicated it will implement Judge Gray's recommendation in the inquest into the death of Luke Batty that access to the Family Violence Court Division be expanded across Victoria and that CISP be made available at court locations where there is a Family Violence Court Division, along with family violence-trained CISP case managers. It is important that as CISP builds its family violence capacity, it coordinates its work with the broader network of providers of services and programs to perpetrators of family violence.

## Recommendation 89

The Secretary of the Department of Justice and Regulation approve a broader range of service providers to provide counselling services to perpetrators who are subject to a counselling order issued by the Magistrates' Court of Victoria under section 130 of the *Family Violence Protection Act 2008* (Vic). Such service providers should have expertise in the interplay between family violence and drug and alcohol misuse or mental illness, provided the purpose of the counselling remains within the scope of the statutory objectives of Part 5 of the Act [within three years].

## Recommendation 90

The Victorian Government, working with the courts and providers of men's behaviour change programs, establish an improved process for monitoring the attendance of perpetrators who are ordered to participate in behaviour change programs and the outcomes of their participation in those programs [within 12 months].

### Quality of service

MBCPs are run by a range of different providers in many different settings with varying resources. As a result, the course content, activities and duration are often varied. While providers of MBCPs are required to comply with the No To Violence minimum standards in order to receive government funding, it is important that any intervention with violent men is delivered in accordance with the most recent knowledge about what constitutes best practice. The Commission heard in evidence that the minimum standards, which were published 10 years ago, set the bar too low in terms of program provision. We are concerned that the current standards that apply to the delivery of MBCPs in Victoria are inconsistent with the evidence about best practice. In particular, we are concerned that the minimum standards be revised to address the following issues:

- ▷ While the minimum standards currently provide for contact with women and children, these requirements should be strengthened to ensure that this happens in practice, in light of evidence that suggests that women consider this service extremely valuable, especially in terms of helping them to assess their safety levels
- ▷ While the minimum standards currently impose a minimum duration of 12 two-hour long sessions, there is growing international consensus that programs need to be run for a longer period in order for there to be effective intervention.
- ▷ Minimum standards should provide adequate safeguards to deal with perpetrators' varied responses to treatment and should be used in conjunction with individualised engagement with perpetrators.
- ▷ The current 'one-size-fits-all' approach to MBCPs renders them inappropriate for certain population groups, including CALD communities, Aboriginal and Torres Strait Islander communities, gay, bisexual, transgender and intersex men, and people with disabilities. In terms of providing adequate programs for men with disabilities, the minimum standards should be updated to clarify the obligations imposed under the Equal Opportunity Act.
- ▷ There is a need for suitably qualified facilitators of MBCPs.

We recommend that the Victorian Government review the current minimum standards in consultation with No To Violence and service providers to ensure that they are updated and appropriately address current gaps in the implementation of MBCPs. This process should be completed within 18 months.

In Recommendation 140, the Commission recommends that the minimum standards be reviewed and updated to specify providers' obligation to develop suitable services for diverse communities.

The Commission also considers that there should be an accreditation scheme for providers of MBCPs to ensure consistency of service delivery and that the providers have the skills and capacity to deliver programs in accordance with the minimum standards.

The Commission's recommendation to review and update the minimum standards for MBCPs will result in significant changes to program design and delivery. In turn, the qualifications of supervisors, facilitators and contact workers in MBCPs may need to be revised.

The industry plan we recommend in Chapter 40 should address both anticipated levels of demand for places in MBCPs and the attributes and skillset required of the workforce to deliver a redesigned program, in particular to attract and retain staff, avoid ‘burnout’ and ensure sustainability of the workforce. In this context, the Commission believes that it would be desirable for there to be greater opportunities for people to undertake specialist training to facilitate behaviour change programs, including by expanding the number of course providers and courses available, and the capacity to deliver training to people based in regional Victoria.

Ensuring the development of a family violence workforce that understands that family violence can manifest differently in different communities and that knows how to respond accordingly, is skilled in working with different cohorts, and is diverse, is a central feature of the Commission’s recommendations for industry planning. This is described in Chapter 40.

## Recommendation 91

The Victorian Government, in consultation with No To Violence [within 12 months]:

- ▷ review and update the Men’s Behaviour Change Programs Minimum Standards to reflect research findings, national and international best practice, and the central importance of partner contact work
- ▷ develop a compliance framework, incorporating an accreditation process, for providers of men’s behaviour change programs.

## Ensuring adequate investment in perpetrator interventions

Accurately measuring demand for MBCPs is difficult at present, as the funding and oversight arrangements are complex and varied, and make disaggregation of particular indicators and costs challenging.

There are a number of indicators suggesting pressure on the system—dramatic increases in formal referrals to services and lengthy waiting lists—is occurring alongside modest increases in investment. These indicators are not able to identify the potential demand for places in MBCPs by men who have not been referred by the police, courts or other service providers, but for whom participation in a program may be valuable.

Adequate investment in perpetrator interventions is critical for ensuring that opportunities for perpetrators to address their violent behaviour are seized in a timely way. Encouraging or requiring perpetrators to participate in programs that are, in reality, unavailable compromises efforts to achieve accountability.

The Commission has recommended that the Victorian Government investigate and fund a broader suite of perpetrator interventions than is currently available. This will involve resourcing new programs. In the meantime, it is essential that the existing MBCPs have the capacity to provide services to perpetrators who are referred for participation in both mandated and voluntary programs.

## Recommendation 92

The Victorian Government ensure that, pending the implementation of an expanded range of perpetrator interventions, funding for men’s behaviour change programs is sufficient to meet demand from those required to attend under a counselling order issued under Part 5 of the *Family Violence Protection Act 2008* (Vic), and those who volunteer to attend such programs [within 12 months].

## Regulating the supply of alcohol

Although alcohol use is associated with a relatively small proportion of family incidents, it is widely regarded as increasing the severity and incidence of family violence. Acknowledging that alcohol consumption plays a part in family violence does not excuse violent behaviour. On the contrary, the Commission considers that more extensive engagement with all of the risk factors that contribute to family violence is required to appropriately respond to violence, to support victims, and to hold perpetrators to account.

The findings of the 2013 National Community Attitudes Towards Violence Against Women Survey about intimate partner violence and sexual assault being excused due to alcohol show how much work needs to be done in this area. In particular, there is a need for a sophisticated understanding of the relationship between drug and alcohol misuse and family violence, which recognises the risks posed by drug and alcohol misuse without seeing it as mitigating perpetrator accountability. Fostering that understanding will likely involve public education campaigns, and targeted programs in schools or sporting clubs that are tailored to particular communities.

The Commission considers that greater attention should be paid to the relationship between alcohol supply and family violence in light of the evidence showing that alcohol misuse increases the severity and frequency of family violence, and that many in the community continue to believe that excess alcohol consumption excuses the use of family violence.

The Commission's primary focus in relation to the links between alcohol misuse and family violence has been on improving the availability of services for victims and perpetrators affected by family violence who have alcohol-related issues.

In relation to the supply and regulation of alcohol at a statewide or community level, the Commission considers these are properly considered in the context of the detailed review of the Liquor Control Reform Act being undertaken by the Victorian Government and in consultation with relevant experts. We note Ms Carr's evidence that the review will investigate measures relevant to family violence. This should be specified as a priority in the terms of reference for the review. In conducting the review, the Victorian Government should ensure that it undertakes comprehensive consultation with experts on family violence as well as experts on alcohol harm minimisation. The review should also explore initiatives that challenge the perpetuation of attitudes that tend to excuse family violence when alcohol is involved.

### Recommendation 93

The Victorian Government ensure that the terms of reference of the current review of the *Liquor Control Reform Act 1998* (Vic) consider family violence and alcohol-related harms. The review should involve consultation with people who have expertise in the inter-relationship between family violence and alcohol use.

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- 428 There is a complaints mechanism for third parties to raise issues of non-compliance with No To Violence whereby a notification must be made to No To Violence management who then convenes a membership review panel to hear the complaint. Complaints are investigated by a person selected by the panel and if they are upheld a recommended course of action will be made from the panel to the management committee. Sanctions may include: suspending membership, revoking membership and informing other relevant bodies. See No To Violence, *Compliance and Complaints* <<http://ntv.org.au/what-we-do/mens-behaviour-change/compliance-complaints/>>.
- 429 Bethany Community Support, Submission 434, 13.
- 430 No To Violence; Men's Referral Service, Submission 944, 38.
- 431 See, eg, ibid 36-8.
- 432 Transcript of Vlasis, 24 July 2015, 1432 [7]-[15].
- 433 No To Violence; Men's Referral Service, Submission 944, 17.
- 434 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 14; Victorian Gay & Lesbian Rights Lobby, Submission 684, 11; Seniors Rights Victoria, Submission 915, 52; Victorian Aboriginal Legal Service, Submission 826, 11-12; MonashLink Community Health Services Ltd, Submission 121, 11-12; Statement of Carr, 8 July 2015, 5 [27]; Women's Legal Service Victoria—01, Submission 940, 11, 49.
- 435 Relationships Australia Victoria, Submission 635, 17.
- 436 InTouch Multicultural Centre Against Family Violence, Submission 612, 55; Community consultation, Traralgon, 13 May 2015; Community consultation, Melbourne, 7 July 2015.
- 437 Relationships Australia Victoria, Submission 635, 25; Women's Health West Inc, Submission 239, 31.
- 438 Victorian Aboriginal Community Services Association Limited, Submission 837, 5.
- 439 Victorian Aboriginal Legal Service, Submission 826, 4-6.
- 440 See generally Indigenous Men's Resource and Advisory Service, Submission 771; Victorian Aboriginal Child Care Agency, Submission 947; Victorian Aboriginal Community Services Association Limited, Submission 837.
- 441 Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper No 2, 9.
- 442 Victorian Aboriginal Community Services Association Limited, Submission 837, 4.
- 443 Victorian Aboriginal Legal Service, Submission 826, 11-12.
- 444 Crime Statistics Agency, above n 29, 80.
- 445 Relationships Australia Victoria, Submission 635, 17, 25.
- 446 Ibid 25.
- 447 InTouch Multicultural Centre Against Family Violence, Submission 612, 31.
- 448 Ibid.
- 449 Kildonan UnitingCare, Submission 770, 6.
- 450 Brotherhood of St Laurence, Submission 818, 12.
- 451 Bethany Community Support, Submission 434, 9; Kildonan UnitingCare, Submission 770, 4; No To Violence; Men's Referral Service, Submission 944, 41.
- 452 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 3; Victorian Gay & Lesbian Rights Lobby, Submission 684, 2-3.
- 453 This program is ReVisioning. See Katie Lloyd, 'Homophobia, Transphobia and Men's Behaviour Change Work' (No To Violence Male Family Violence Prevention Association, 2015) 5; Victorian Aids Council Working Together, *ReVisioning* <<http://www.vac.org.au/revisioning>>.
- 454 Minister for Families and Children, The Hon. Jenny Mikakos, 'Boosting Men's Behaviour Change Support To End The Cycle of Family Violence' (Media Release, 24 February 2016).
- 455 Semi-structured interviews were conducted with selected service providers in metropolitan Victoria who either work with male perpetrators of family violence in MBCPs or provide other supports to this cohort of men. A survey monkey questionnaire was also distributed Australia wide to service providers who conduct programs: Kylie Lloyd, 'Homophobia, Transphobia and Men's Behaviour Change Work' (No To Violence Male Family Violence Prevention Association, 2015) 14-15.
- 456 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 18.
- 457 Lloyd, above n 455, 16.
- 458 Ibid 23.
- 459 Statement of Carr, 8 July 2015, 5 [27]; Community consultation, Maryborough 1, 21 April 2015.
- 460 No To Violence; Men's Referral Service, Submission 944, 439.
- 461 Statement of Brandenburg, 21 July 2015, 8, [35].
- 462 Women with Disabilities Victoria, Submission 924, 8.
- 463 Office of the Public Advocate, Submission 905, 28-30.
- 464 Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 14-15.
- 465 Anonymous, Submission 757, 1.
- 466 Statement of Gruenert, 8 July 2015, 4-5 [25].
- 467 Caraniche, Submission 456, 3.
- 468 Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 21.
- 469 Ibid i.

470 Women's Legal Service Victoria—01, Submission 940, 51.

471 Transcript of Ogloff, 24 July 2015, 1445 [1]–[8].

472 Transcript of Vlasis, 24 July 2015, 1431 [25]–[31].

473 Statement of Day, 1 July 2015, 7 [31].

474 Transcript of Humphreys, 17 July 2015, 605 [11]–[19].

475 Transcript of Easton, 24 July 2015, 1418 [4]–[27], 1424 [1]–[3].

476 Statement of Gruenert, 8 July 2015, 4 [25]–5 [26].

477 Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 3, 6.

478 Statement of Humphreys, 16 July 2015, 8 [39.4].

479 Victorian Council of Social Service, Submission 467, 61.

480 Anonymous, Submission 165, 6.

481 Victoria Police, Submission 923, 12.

482 Coroners Court of Victoria, above n 13, 105–106.

483 Ibid.

484 Letter from The Hon. Daniel Andrews MP, Premier of Victoria to Judge Ian Gray, former State Coroner, 23 December 2015 <[http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vic\\_luke+batty.pdf](http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vic_luke+batty.pdf)>.

485 For example, there is legislation to allow for the involuntary treatment of individual for mental health and substance abuse concerns. See, eg, detention and treatment orders pursuant to the *Severe Substance Dependence Treatment Act 2010* (Vic) or treatment orders under the *Mental Health Act 2014* (Vic).

486 Expert Roundtable, Melbourne 2, 21 September 2015.

487 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 10–11; *Family Violence Protection Act 2008* (Vic) ss 129, 130.

488 *Family Violence Protection Act 2008* (Vic) s 129.

489 Ibid s 127(b)(i)–(iii).

490 Ibid s 133.

491 Magistrates' Court of Victoria, *Court Directed Counselling* (14 April 2014) <<https://www.magistratescourt.vic.gov.au/jurisdictions/intervention-orders/family-violence-court-programs/counselling-orders/court-directed-counselling>>.

492 Ibid.

493 Ibid.

494 Magistrates' Court of Victoria, Family Violence Counselling Orders Program—Operating Guidelines, above n 189, 17–20.

495 Ibid 10, 21–22.

496 Ibid 10, 17, 21–22.

497 Statement of De Cicco, 21 July 2015, Attachment 1, 39.

498 Ibid; Department of Premier and Cabinet, above n 331, 25.

499 Statement of De Cicco, 21 July 2015, Attachment 1, 39–40.

500 Ibid Attachment 1, 42. Failure to attend counselling is not a breach of an intervention order as an intervention order and an order to attend counselling are two separate orders. See Magistrates' Court of Victoria, 'Offence of Failure to Attend Approved Counselling', 1, provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

501 Safe Steps Family Violence Response Centre, Submission 942, 24; Inner South Community Health, Submission 525, 7.

502 Inner South Community Health, Submission 525, 7.

503 Peter Coburn, Submission 448, 4; Inner South Community Health, Submission 525, 7; Relationships Australia Victoria, Submission 635, 23–24.

504 Federation of Community Legal Centres, Submission 958, 8–9.

505 Relationships Australia Victoria, Submission 635, 23.

506 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 33.

507 Transcript of Broughton, 5 August 2015, 1952 [9]–[28].

508 Ibid 1952 [29]–1953 [6].

509 Transcript of Hawkins, 5 August 2015, 1954 [7]–[16].

510 Statement of De Lacy and Rutter, 27 July 2015, 11 [56].

511 Statement of Walker, 31 July 2015, 5 [27].

512 Ibid 6 [30].

513 Coroners Court of Victoria, above n 13, 105, 106.

514 Letter from The Hon. Daniel Andrews MP, above n 484.

515 Kevin Lockyer, Glyn Gaskarth and Charlotte McLeod, 'Swift and Certain: A New Paradigm for Criminal Justice' (Policy Exchange, December 2014) 7–8.

516 Transcript of Freiberg, 6 August 2015, 2123 [1]–[13]; Transcript of Hyman, 5 August 2015, 1886 [16]–[29].

517 Centre for Innovative Justice, above n 1, 60.

518 Ibid 19.

519 Ibid 64.

520 *Sentencing Act 1991* (Vic) ss 48K–48L.

521 Department of Justice and Regulation, Corrections Victoria, 'Follow up Information from Jan Shuard's FVRC appearance' provided by the State of Victoria in response to the Commission's request for information dated 7 August 2015.

522 Expert Roundtable, Melbourne 2, 21 September 2015; Transcript of Hyman, 5 August 2015, 1888 [1]–[17].

523 Statement of Miller, 15 July 2015, 15 [66]–16 [69].

524 Centre for Innovative Justice, above n 1, 5.

525 No To Violence; Men's Referral Services, Submission 944, 16.

526 Ibid 25–26.

527 Statement of Hyman, 5 August 2015, 10 [49].

528 Mackay et al, above n 2, 9.

529 No To Violence, 'Men's Behaviour Change Programs in Victoria: A Sector Snapshot' (2011) 16–17, Figure 1.

530 Department of Human Services, 'Enhancing Access to Men's Behaviour Change Programs: Service Intake Model and Practice Guide' (October 2009) 17.

531 Ibid.

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533 No To Violence; Men's Referral Service, Submission 944, 20–21.

534 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 11.

535 Ibid 13–14. CISP is in place in Sunshine and Latrobe Valley and the CREDIT/Bail support program operates at Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Ringwood and Moorabbin.

536 Statement of De Cicco, 21 July 2015, Attachment 1, 28–30.

537 Ibid.

538 Transcript of De Cicco, 24 July 2015, 1517 [21], [30], 1518 [4]; Statement of De Cicco, 21 July 2015, 2[10], 4[23], 5[28]; Statement of Reaper, 4 [15]–[19].

539 While this data was not able to be disaggregated, the Department of Health and Human Services has estimated that \$3 million of this funding was allocated to MBCPs: Department of Health and Human Services, 'DHHS Response to Items 10–14 and 18', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.

540 Department of Health and Human Services, 'September 21 FVRC Notice to Produce - DHHS', 9, provided by the State of Victoria in response to the Commission's Notice to Produce dated 21 September 2015.

541 Based on Department of Health and Human Services, 'Response in relation to Part A 2 (a(ii) and (iii))', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.

542 Victorian Government, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5, 9.

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545 Crime Statistics Agency, above n 29, 40. Note that this data includes both male and female perpetrators. The number of Victoria Police Family Violence incidents increased from 35,666 to 65,154 between 2009–10 and 2013–14 (83 per cent increase).

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548 No To Violence; Men's Referral Service, Submission to the Victorian Government 'Holding Men Who Perpetrate Family Violence Accountable: A System Nearing Crisis Point', 2013, 6 <<http://ntv.org.au/wp-content/uploads/2013-NTV-submission-mbcp-funding1.pdf>>.

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550 Magistrates' Court of Victoria, 'MCV\_MBCP places' provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

551 Ibid; Magistrates' Court of Victoria, 'Q27 Counselling orders made', provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

552 Crime Statistics Agency, above n 29, Table 16: Total referrals made following a family incident—Victoria Police, July 2009 to June 2014.

553 Ibid Integrated Reports and Information System data source, Tab 11, Table 11: Number of clients accessing Men's Behaviour Change Programs, by age group, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

554 No To Violence; Men's Referral Service, Submission 944, 1920.

555 Statement of Brandenburg, 21 July 2015, 6–7 [29].

556 Transcript of Vlairs, 24 July 2015, 1436 [21]–[24].

557 No To Violence; Men's Referral Service, Submission 944, 32.

558 Transcript of Reaper, 24 July 2015, 1533 [5]–[14].

559 Brotherhood of St Laurence, Submission 818, 11.

560 No To Violence; Men's Referral Service, Submission 944, 32.

561 No To Violence, above n 171, 46–9.

562 Ibid 51.

563 Ibid 46–8.

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565 Latrobe Community Health Service Ltd, Submission 630, 2.

566 No To Violence, above n 564.

567 Premier of Victoria, above n 454.

568 Mallee Family Violence Executive, Submission 617, 12; Gippsland Lakes Community Health, Submission 229, 4; Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 7. See also Safer Victorian Family Violence Reform Research Programs, 'Supporting Men's Accountability for Family Violence in Men's Behaviour Change Programs' (29 May – 1 June 2011), 22, produced by the Department of Premier and Cabinet in response to the Commission's Notice to Produce dated 5 June 2015.

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572 Victoria Police, Submission 923, 15.

573 Christopher Morrison and Karen Smith, 'Disaggregating Relationships Between Off-Premise Alcohol Outlets and Trauma' (prepared for the Foundation for Alcohol Research and Education, Monash University, School of Public Health and Preventative Medicine, May 2015) 5.

574 Statement of Miller, 15 July 2015, 17–18 [79]; Transcript of Miller, 17 July 2015, 634 [19]–[25].

575 National Alliance for Action on Alcohol, Submission 929, 6.

576 Foundation for Alcohol Research and Education, Submission 647, 15.

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578 Statement of Miller, 15 July 2015, 17–18 [79].

579 Ibid 17 [77].

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581 Our Watch, Australia's National Research Organisation for Women's Safety and VicHealth, above n 127, 42.

582 Ibid 69.

583 Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, above n 26, 36.

584 Ibid.

585 Transcript of Carr, 17 July 2015, 708–721.

586 Statement of Carr, 13 July 2015, 1 [3]–[4].

587 *Liquor Control Reform Act 1998* (Vic) s 4.

588 Statement of Carr, 13 July 2015, 13 [46].

589 Ibid 13 [47]–[48].

590 Ibid Attachment 11.



# Glossary

Affected family member	A person who is to be protected by a family violence intervention order. This terminology is also used by Victoria Police to describe victims of family violence.
Affidavit	A written statement made under oath or affirmation.
Applicant	A person who applies for a family violence intervention order (or other court process). This can be the affected family member or a Victoria Police member acting on behalf of the affected family member.
Applicant support worker	A worker at some magistrates' courts who advises and assists an applicant with court procedures (for example, applying for a family violence intervention order).
Bail	The release of a person from legal custody into the community on condition that they promise to re-appear later for a court hearing to answer the charges. The person may have to agree to certain conditions, such as reporting to the police or living at a particular place.
Breach	A failure to comply with a legal obligation, for example the conditions of a family violence safety notice or family violence intervention order. Breaching a notice or order is a criminal offence. In this report the terms 'breach' and 'contravention' are used interchangeably.
Brokerage	A pool of funds allocated to a service provider to purchase goods and/or services for its clients according to relevant guidelines. For example, brokerage funds could be used to pay for rental accommodation, health services and other community services.
Child	A person under the age of 18 years.
CISP	The Court Integrated Services Program is a case-management and referral service operating in certain magistrates' courts for people who are on bail or summons and are accused of criminal offences.
Cold referral	A referral to a service where it is up to the client to make contact, rather than a third party. For example, where a phone number or address is provided to a victim.
Committal proceeding	A hearing in the Magistrates' Court of Victoria, to determine if there is sufficient evidence for a person charged with a crime to be required to stand trial.
Contravention	A breach, as defined above. In this report, the terms 'breach' and 'contravention' are used interchangeably.
Crimonogenic	Producing or leading to crime or criminality.
Culturally and linguistically diverse	People from a range of different countries or ethnic and cultural groups. Includes people from non-English speaking backgrounds as well as those born outside Australia whose first language is English. In the context of this report, CALD includes migrants, refugees and humanitarian entrants, international students, unaccompanied minors, 'trafficked' women and tourists. Far from suggesting a homogenous group, it encompasses a wide range of experiences and needs.
Culturally safe	An approach to service delivery that is respectful of a person's culture and beliefs, is free from discrimination and does not question their cultural identity. Cultural safety is often used in relation to Aboriginal and Torres Strait Islander peoples.
Directions hearing	A court hearing to resolve procedural matters before a substantive hearing.

Duty lawyer	A lawyer who advises and assists people who do not have their own lawyer on the day of their court hearing and can represent them for free in court.
Ex parte hearing	A court hearing conducted in the absence of one of the parties.
Expert witness	A witness who is an expert or has special knowledge on a particular topic.
Family violence intervention order	An order made by either the Magistrates' Court of Victoria or the Children's Court of Victoria, to protect an affected family member from family violence.
Family violence safety notice	A notice issued by Victoria Police to protect a family member from violence. It is valid for a maximum of five working days. A notice constitutes an application by the relevant police officer for a family violence intervention order.
Federal Circuit Court	A lower level federal court (formerly known as the Federal Magistrates' Court). The court's jurisdiction includes family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices. The court shares those jurisdictions with the Family Court of Australia and the Federal Court of Australia.
First mention	The first court hearing date on which a matter is listed before a court.
Genograms	A graphic representation of a family tree that includes information about the history of, and relationship between, different family members. It goes beyond a traditional family tree by allowing repetitive patterns to be analysed.
Headquarter court	In the Magistrates' Court of Victoria, there is a headquarter court for each of its 12 regions at which most, if not all, of the court's important functions are performed. All Magistrates' Court headquarter courts have family violence intervention order lists.
Heteronormative/heteronormatism	The assumption or belief that heterosexuality is the only normal sexual orientation.
Indictable offence	A serious offence heard before a judge in a higher court. Some indictable offences may be triable summarily.
Informant	The Victoria Police officer who prepares the information in respect of a criminal charge. The informant may be called to give evidence in the court hearing about what they did, heard or saw.
Intake	A point of entry or 'doorway' into a service or set of services.
Interim order	A temporary order made pending a final order.
L17	The Victoria Police family violence risk assessment and risk management report. The L17 form records risks identified at family violence incidents and is completed when a report of family violence is made. It also forms the basis for referrals to specialist family violence services.
Lay witness	A witness who does not testify as an expert witness.
Mandatory sentence	A sentence set by legislation (for example, a minimum penalty) which does not permit the court to exercise its discretion to impose a different sentence.
Other party	A term used by Victoria Police to describe the person against whom an allegation of family violence has been made (the alleged perpetrator).

Prescribed organisation	An organisation empowered to share information relevant to risk assessment and risk management under the Commission’s recommended information-sharing regime to be established under the <i>Family Violence Protection Act 2008 (Vic)</i> . Such organisations could include, for example, Support and Safety Hubs, specialist family violence services, drug and alcohol services, mental health services, courts, general practitioners and nurses. The proposed regime is discussed in Chapter 7.
Protected person	A person who is protected by a family violence intervention order or a family violence safety notice.
Recidivist	A repeat offender who continues to commit crimes despite previous findings of guilt and punishment. In this report this term is also used to describe perpetrators against whom more than one report of family violence has been made to Victoria Police, including where no criminal charge has been brought.
Registrar	An administrative court official.
Respondent	A person who responds to an application for a family violence intervention orders (or other court process). This includes a person against whom a family violence safety notice has been issued.
Respondent support worker	A worker based at some magistrates’ courts who advises and assists respondents with court procedures, (for example, a family violence intervention order proceeding).
Risk assessment and risk management report	A Victoria Police referral L17 form, completed for every family violence incident reported to police.
Risk Assessment and Management Panels	Also known as RAMPs, these are multi-agency partnerships that manage high-risk cases where victims are at risk of serious injury or death. These are described in Chapter 6.
Summary offence	A less serious offence than an indictable offence, which is usually heard by a magistrate.
Summons	A document issued by a court requiring a person to attend a hearing at a particular time and place.
Triable summarily	Specific indictable offences that can be prosecuted in the Magistrates’ Court of Victoria, subject to the consent of the accused and the magistrate.
Universal services	A service provider to the entire community, such as health services in public hospitals or education in public schools.
Warm referral	A referral to a service where the person making the referral facilitates the contact—for example, by introducing and making an appointment for the client.
Young person	A person up to the age of 25 years.



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