



Eastern Community Legal Centre Response to the Family Violence Reform Implementation Monitor

July 2020

Contents

WHAT ARE THE MOST CRITICAL CHANGES TO THE FAMILY VIOLENCE SERVICE SYSTEM THAT STILL NEED TO OCCUR?	5
<i>Integration of services</i>	5
<i>Clear definitions of integration and integrated practice</i>	6
<i>MARAM training and integrated practices</i>	7
<i>Integrated practice funding models</i>	9
<i>Case Study Integrated legal and social advocacy model</i>	9
Recognition of the overlap between prevention, early intervention and response work	11
ARE THERE ANY PARTS OF THE FAMILY VIOLENCE REFORMS THAT HAVE NOT YET PROGRESSED ENOUGH AND REQUIRE MORE ATTENTION?	11
Court and justice response slow to change	11
<i>Court infrastructure</i>	11
<i>Children at court: a traumatic experience</i>	12
<i>Delays</i>	13
<i>Court culture</i>	13
<i>The legal profession</i>	14
<i>Legal assistance in family violence matters</i>	14
<i>Case Study Early intervention legal advice – antenatal setting</i>	16
<i>Police response</i>	17
<i>Case Study Misidentification of perpetrator</i>	18
The police placed greater weight on Colin’s version of events, simply because he could articulate himself more clearly that night. However, had an interpreter been present or at least arranged by phone, the police would have had a better chance of understanding that Colin was in fact the perpetrator and his behavior was a significant risk factor. As is well known, choking is considered a significant risk factor for much more dangerous and devastating outcomes in family violence.	19
<i>Case Study Early intervention legal advice – early childhood setting</i>	19
<i>Elder abuse</i>	20
<i>Integrated Models of Care</i>	20
<i>Case Study Elder abuse integrated practice</i>	22
<i>Funding for Elder Abuse services</i>	23
Gaps in the continuum in addressing Elder Abuse – primary prevention/early intervention/response	23
<i>Unmet legal need – advice on Wills and Powers of Attorney</i>	24
<i>Future planning</i>	24
<i>Financial abuse service trials – Victoria Police</i>	25
<i>Training for professionals in recognising and responding to Elder Abuse</i>	25
IMPACT OF THE COVID-19 PANDEMIC.....	26

What has been the biggest impact of the COVID-19 pandemic on your organisation or sector? How have the services that your organisation or sector provides had to change?.....26

Has the COVID-19 pandemic highlighted any strengths or weaknesses in the family violence service system?27

CONTACT27

INTRODUCTION

Eastern Community Legal Centre (**ECLC**) is a multidisciplinary legal service that works to prevent problems, progress fair outcomes and support the wellbeing and resilience of communities and community members in Melbourne’s East.

ECLC is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are experiencing disadvantage. Having operated for over 45 years, ECLC is one of Australia’s most established community legal centres.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of migrants to Australia, particularly from the Horn of Africa and Burma.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

ECLC welcomes the opportunity to be able to provide its views on this area of the service system that directly impacts upon its communities. ECLC has operated a Family Violence Intervention Order duty lawyer service at the Ringwood Magistrates’ Court for almost twenty years. ECLC assists applicants and respondents of Family Violence Intervention Orders to provide advice, negotiation and representation on mention days in the family violence list. The Centre also provide advice and casework to family violence victims and respondents outside of the court mention days.

One of ECLC’s main priorities is to advocate against family violence, particularly as it affects women and children. Apart from the generalist legal program, ECLC also manages a number of specific family violence programs where advice and casework is provided in a range of family violence related matters which are referenced throughout the body of this submission.

This submission will address a number of questions raised by the Family Violence Reform Implementation Monitor and is informed by ECLC’s experience across the prevention, early intervention and response continuum.

ECLC acknowledges the investments that the State government has made in implementing (or going some way to implement) many of the recommendations from the Family Violence Royal Commission. (**Royal Commission**).

However, it is ECLC's view that there still remains substantial work to be done and investments to be made, in key areas to prevent and respond to family violence.

The main focus for this submission will be in the following areas:

- Court response;
- Integrated services and integrated practice;
- Early intervention work, in particular the importance of early intervention legal advice; and
- Elder abuse.

It is ECLC's view that for the family violence system to respond in a way which best meets the needs of the entire community, the work through the continuum from primary prevention, early intervention and response services is linked, and must be recognised.

The Royal Commission acknowledged the critical nature of work across the continuum (Recommendation 220). ECLC's work demonstrates that often work from each phase can overlap and become blurred, but that often this is a necessary complexity of the work in this sector.

WHAT ARE THE MOST CRITICAL CHANGES TO THE FAMILY VIOLENCE SERVICE SYSTEM THAT STILL NEED TO OCCUR?

Integration of services

ECLC has extensive experience in developing and implementing integrated practice programs to assist women experiencing family violence. The models ECLC have adopted have been successful and adapted to suit client and community needs as well as the organisation's strengths and capabilities. ECLC currently operates the following family violence integrated practice programs:

- Mabels: A Health Justice Partnership providing early intervention legal advice to new mothers;
- SAGE: A family violence case management program providing intensive case management with a lawyer, family violence advocate and financial counsellor; and
- WELS: A Health Justice Partnership providing early intervention legal advice to pregnant women.

Each of these programs has been the subject of independent and rigorous evaluation, and has proven to be successful in its own right. The establishment of these programs, however, has not been without its challenges. ECLC has been open to the challenges posed by integrating practitioners and have addressed these challenges through substantial and detailed program planning at the program commencement, but also being aware of the need to continuously reflect and be adaptable to the needs of practitioners and of ECLC's clients and the community.

The Royal Commission acknowledged the need for services to work together in a more integrated way, and ECLC welcomes the investments which have been made to date in the Orange Door Support and Safety Hubs (**the Hubs**). However, as has been well-documented in the existing reviews into the Orange Door (the Victorian Auditor-General's Office review and the previous Monitor report (February 2020)), the Hubs have faced significant

challenges in offering a successful integrated service to victims of family violence. ECLC echoes the concerns outlined in those reports.

In addition, it is ECLC's observation that part of the challenge in empowering an integrated service system has been that the Royal Commission did not provide guidance on how to facilitate the integration of services at a practical level.

Clear definitions of integration and integrated practice

'Integration' of services or 'integrated practice' can have varying meanings in service delivery. This confusion can lead to differing expectations – amongst both clients and practitioners - about the way in which a service will work.

It is imperative that the government provides greater clarity and support to organisations in this regard. The government must consult the sector when undertaking this work. It is particularly important for the government to consult organisations such as ECLC who have a proven track record in delivering successful integrated practice programs and integrating services. A clear definition of what is meant by 'integration' and 'integrated practice' within particular service settings would be helpful to provide role clarity, and to set expectations of the service and relevant professionals.

Flowing from clearer definitions should follow broader practical guidance and supporting mechanisms for the integration of services at the ground level.

How services can navigate the process of integration

Integrated services or integrated practice require practitioners to often work in ways that they have never worked before. Based on ECLC's experience in operating integrated practice programs, if integration is to be effective, the right supporting mechanisms are needed to enable that work to take place.

For example, professionals such as lawyers or financial counsellors are accustomed to having a large degree of autonomy in running their client files. With integrated practice, this independence and autonomy can be challenged when professionals have to 'share the space' and deliver advice to clients which is complementary but which also may conflict in terms of priorities or timelines.

Examples of supporting mechanisms which can help support integrated practice programs include:

- Professional development for practitioners around the philosophy, values and laws/regulatory frameworks governing other practitioners in the integrated team;
- Being upfront about the challenges involved in integrated practice and creating supportive policies and procedures to guide practitioners when there is conflict;
- Clear guidance for practitioners around how to protect client legal privilege, including training and materials setting out likely scenarios and how to constructively navigate the 'grey' areas;
- Clear guidance for practitioners around communicating with clients, especially in relation to the purpose of integrated practice, as well as the risks and benefits of this method of service delivery; and

- Incorporating reflective practice processes in program design, to enable practitioners to reflect and evolve practices to meet the needs of clients and the particular program dynamics.

Preparing practitioners for these challenges and equipping them with policies, procedures and tools to guide their work in these new environments can go a long way to reducing the risk of practitioner conflict or breaches of client confidentiality.

Building such mechanisms for both the Orange Door and the wider sector as a whole are critical for the success of such models.

MARAM training and integrated practices

ECLC welcomes the introduction of the MARAM Framework and its intended use by all services and sectors in order to establish a system-wide shared understanding of family violence and its provision of information and resources that professionals need to keep victim survivors safe, and to keep perpetrators accountable for their actions. ECLC also supports the importance for legal services not being prescribed in the Information Sharing Schemes legislation that forms an important component of the MARAM Framework.

Unfortunately with MARAM training progressively becoming available to ‘only prescribed’ organisations and services in Victoria, this leaves ECLC and the state-wide legal assistance sector without access to appropriate Risk Assessment and Risk Management training. Furthermore it also embeds the culture and practice of different parts of the legal framework responding to issues of family violence operating in ‘silos’.

Whilst the MARAM training is essential to legal services who play a critical role in preventing, intervening early and responding to family violence, it is even more essential to legal services that employ a range of community service professionals in family violence roles whose responsibilities would include family violence risk assessment and risk management. This is the case particularly with ECLC’s Integrated Practice programs who employ family violence advocates, elder abuse advocates and financial counsellors.

ECLC has recently received a small amount of funding from the Eastern Metropolitan Region Regional Family Violence Partnership to work with Domestic Violence Resource Centre and Family Safety Victoria to develop MARAM aligned Risk Assessment and Risk Management training specifically for community service professionals who work in the legal assistance sector. Whilst ECLC welcomes this opportunity, it is ECLC’s view that this type of training should be available to all manner of professionals within integrated services and integrated practices to ensure that appropriate risk management standards are maintained to ensure the protection of community members accessing the service system.

4 COAG (2016) Family violence and the court system, COAG 2016 National Summit, 27-28 October, Brisbane: Department of Premier and Cabinet Queensland <<https://coagvawsummit.pmc.gov.au/family-law>>.

5 ANROWS (2015) Landscapes: Meta-evaluation of existing interagency partnerships, collaboration, coordination and/or integrated interventions and service responses to violence against women: State of knowledge paper, September, p.

Integrated practice funding models

To support the integration of services and service hubs, instead of siloed funding models, the government should actively provide integrated practice funding models.

This concern is reflected in the difficulty many of ECLC's practitioners face in referring clients to appropriate support services. Particularly in the areas of mental health and homelessness, clients can experience significant barriers to accessing support for such services due to very strict referral pathways or strict intake requirements. For clients experiencing family violence, especially those with complex needs, navigating multiple services, intake points and also re-telling their story present significant barriers to access.

The fact that some services still struggle to integrate well with other services demonstrates that the system has not evolved to having clients at the centre of the work. Instead many services cling to a rigid understanding of the processes to be followed before a service can be offered. This goes against the approach ECLC has found to achieve good client outcomes.

SAGE is ECLC's integrated legal and advocacy family violence program. Through service design and practice, SAGE has demonstrated that integrating legal and advocacy work can succeed. The key to SAGE's success has been to develop robust and sophisticated processes that carefully consider and manage the potential conflicts amongst professions and their obligations, as well as the client's rights within the legal framework (confidentiality and client legal privilege).

Case Study

Integrated legal and social advocacy model

'Leah' had migrated from Burma to Australia with her husband several years ago. They had 4 children together. Leah's husband had been violent over several years. Leah didn't speak much English and was quite isolated without any family in Australia. In a particularly violent incident, Leah's husband inflicted serious injuries on Leah which resulted in hospitalisation. Police charged Leah's husband with assault and issued a Family Violence Safety Notice against him. Leah had always been too frightened and isolated to seek help prior to this point.

The social worker at the hospital referred Leah to SAGE.

With the assistance of an interpreter at each appointment, the SAGE advocate and lawyer built trust with Leah and took time to ensure the space was culturally safe. The advocate worked with Leah to develop detailed safety plans for herself and her children, as well as helping to build safety around the legal processes she would have

to navigate. Leah's lawyer helped her to apply for divorce, advise on children's arrangements, and to liaise with Fines Victoria to address fines her husband incurred in her name without her knowledge. The SAGE team also assisted Leah to apply to VOCAT for compensation for the injuries sustained the night she was assaulted, as well as to provide increased safety around her home.

The work with Leah took place over several years. Leah's experience of trauma meant that she was not always able to engage regularly with the program. The SAGE lawyer and advocate needed to be prepared to work at the pace which was right for Leah. Being able to accommodate the needs of clients in this way demonstrates the strength of a trauma-informed program by meeting the client's needs, but also reflects the complexity and flexibility of the response required in such integrated settings.

Leah's lawyer and advocate worked closely together with Leah to ensure that any legal steps were taken at the pace at which Leah could manage (in light of the trauma she had experienced) and in a way that prioritised her and her children's safety.

Leah's husband breached the Intervention Order twice. Safety planning was crucial to Leah and her children staying safe, even with the support of the legal system.

The SAGE model provided specialist and intensive case management services which were critical to Leah's ability to negotiate the legal system safely. This model enabled the practitioners to spend the time together working to address the challenges of the client's cultural perspective of family violence and address this in a culturally sensitive way. Establishing trust between client and practitioners in this way led to better engagement with the SAGE program and therefore more holistic and impactful legal and social support. Furthermore, the integrated model provided the complementary support of two professionals, each with specialist knowledge and skills and who could work with and support each other to meet the client's needs in a way that separate services simply could not.

This client faced significant barriers in accessing the support she needed to stay safe. Needing the support of an interpreter, as well as Leah's struggles with her own trauma meant access to mainstream services was not an option she could manage. In addition, Leah continued to experience significant dangers as she interacted with each step in the legal process (getting in and out of the court complex safely, as well as additional threats from her husband in the lead-up to each court date). Therefore the level of support and planning needed to keep her safe was significant and took substantial planning from both the advocate and lawyer.

Recognition of the overlap between prevention, early intervention and response work

In ECLC's experience, there can be significant overlaps in primary prevention, early intervention and response work, particularly when working with CALD (Culturally and Linguistically Diverse) communities. Connecting the prevention message with a practical and meaningful example in responding to family violence can often be a useful way of communicating the prevention message.

Working with CALD communities, prevention work needs to be tailored to the needs each community may have and the different levels of understanding about violence against women.

To engage one community in discussions of gender equality may not have much meaning to them with concepts of gender and equality being understood differently across cultures. For example, by framing a discussion around something relevant such as family dynamics and improving conflict in the home (early intervention), the community has a tangible and meaningful context through which to connect to the broader message.

ECLC's primary prevention project, *Matter of Respect*, offers an example of this. The communities involved are the Indian and Burmese communities. The Indian community has a much broader understanding of violence against women and its drivers, due in part to this community being in Australia longer and having been the focus of many prevention of violence against women projects. This enabled the work to be more focused more on prevention. However, for the Burmese community the focus began with early intervention and response, providing them with resources to better understand family violence and where to get support before opening up conversations around gender equality and other prevention efforts.

To undertake successful prevention work with CALD communities, programs first need to understand the community and start from a place which has context and relevance for them, otherwise there is a significant risk that the prevention message will not be effective.

ARE THERE ANY PARTS OF THE FAMILY VIOLENCE REFORMS THAT HAVE NOT YET PROGRESSED ENOUGH AND REQUIRE MORE ATTENTION?

Court and justice response slow to change

Court infrastructure

It was recognised by the Royal Commission that Court infrastructure was largely outdated in terms of its ability to meet the needs of victims of family violence, hence the recommendation

for Specialist Family Violence Courts (Recommendation 61). Unfortunately, the Specialist Family Violence Courts have been slow to progress and therefore the issues which led to this recommendation remain a problem for ECLC's clients who usually attend at Ringwood Magistrates' Court (**RMC**).

At RMC, victims of family violence and perpetrators use the same entry and exit to and from the Court complex and within the Court building the common space is physically very small on a busy court day (which is usually the case).

The layout of the Court complex means that the Court experience is usually very traumatic for victims, as it is highly likely, almost inevitable, that they will be in close proximity with the perpetrator at some point during their court day. ECLC acknowledges the efforts of RMC in this regard, having had a longstanding commitment to providing a safe and protected area for victims and vulnerable court users in the Safe Waiting Area. However, while this space creates a physical separation for victims and perpetrators, there remain issues with the space itself, some of which are as follows:

- There is a lack of privacy for consultation with lawyers, advocates and support workers, with no real provision for confidential separate consultations;
- It does not adequately accommodate the needs of children, enabling re-traumatisation of child victims of family violence (see further discussion below);
- The space itself does not provide a trauma-informed atmosphere to support victims. Victims are still required to walk through the narrow court waiting area to access the Court room and enter or leave the Court complex.

It is hoped that the Specialist Family Violence Courts (Recommendation 61) will address many of these issues, but unfortunately the progress of these upgrades has been slow.

The Specialist Family Violence Courts should go some way in addressing the above concerns, but RMC is yet to see the commencement of any such works.

This requires urgent attention.

Children at court: a traumatic experience

For children - undoubtedly the most vulnerable court users - the Court experience is distressing and frightening.

For many women, they have no choice but to bring their children to Court with them when going through the Intervention Order process.

While the Safe Waiting Area is available at RMC (discussed above), this unfortunately is unable to provide an adequate space for children's needs, especially when one considers that most court users are required to be at Court for a minimum of 4 hours to negotiate and resolve an

Intervention Order matter at the first mention date. For women with pre-school or primary-aged children, it would be impossible to shield them from the trauma being experienced either by their own mother through this process or the trauma of other victims of family violence around them.

Even if the children are in the Safe Waiting Area with their mother and not face-to-face with the perpetrator, the children will inevitably be exposed to the stress and trauma of those around them. It is highly likely, almost inevitable, that children will overhear details of various aspects of family violence whilst in the court complex. It has been impossible for the court to provide a designated safe, child-friendly, comfortable play space and therefore, it is highly likely that the court process will traumatise or re-traumatise a child who has already been exposed to family violence at home.

There needs to be fit-for-purpose supportive infrastructure and processes within all courts to support children's physical and emotional wellbeing whilst they are at court.

Purpose-built facilities to accommodate children who attend Court are urgently required.

Delays

Despite a recommendation that Intervention Orders be granted speedily and safely (Recommendation 62), victims of family violence are still facing delays in obtaining appointments to apply for Intervention Orders, placing victims at further risk. Unfortunately, the impact of Covid-19 has caused this situation to deteriorate further.

ECLC acknowledges the challenges for the Court in navigating the present circumstances. However, with restricted movement and less 'visibility' of victims due to Covid-19 lockdowns and restrictions, the need for the system to be responsive is more urgent now than ever.

Court culture

It is ECLC's strong view that the cultural leadership from powerful institutions in society has a significant influence on the pace of change in the family violence service system.

While ECLC recognises and acknowledges the work of Courts to try to accommodate the needs of all court users, unfortunately ECLC still witnesses examples of the Court failing to address cultural change from within.

Unfortunately, ECLC has witnessed Magistrates displaying bullying or intimidating behaviours in the courtroom, such as using a raised voice to speak to parties. On one occasion, a Magistrate raised his voice whilst stating to a perpetrator: "You must not commit family violence". Whilst of course, the Magistrate has a role to clearly and forcefully deliver the message to parties that family violence is unacceptable, this message shouldn't be delivered in a way which reinforces or imitates tactics of aggression that has been used by a perpetrator

of family violence. Despite the message being, “Do not commit family violence”, the delivery of the message in the way in which he did reinforces the message that power and authority can be asserted through force and aggression. This of itself, undermines any ability to effect systemic change towards family violence.

The Court is an influential leader in the family violence service system and should be encouraged to lead a trauma-informed approach to all interactions with victims and perpetrators.

The legal profession

It is ECLC’s unfortunate experience that there remain outdated attitudes amongst members of the legal profession, most often private practitioners who don’t specialise in family violence practice.

When lawyers diminish the woman’s experience by failing to acknowledge the impact and trauma of family violence or failing to call to account a perpetrator’s behaviour, this perpetuates a culture in which violence against women is normalised and excused. Whilst the government’s investment in primary prevention work has started to pave the way for shifting such attitudes in the broader community, it is deeply concerning that there remain constant outdated and damaging attitudes from within the legal profession itself.

ECLC calls for mandatory training of all lawyers in family violence, possibly as part of the mandatory curriculum to be covered in Australian tertiary law schools. In addition, there should be a mandatory subject of family violence for all existing legal practitioners on an annual basis so that the entire legal profession is able to, over time, be part of the necessary cultural change.

Legal assistance in family violence matters

The Royal Commission acknowledged the need for proper funding of lawyers in family violence matters (Recommendation 69). Whilst investments have been made to support the work of duty lawyer services, a renewed focus on the role of *early intervention* legal assistance is needed to provide critical support to women when they need it.

The experience in ECLC’s family violence health justice partnerships, *Mabels* and *WELS*, supports the proposition that early intervention legal advice, particularly when part of an integrated practice model, can enhance a woman’s access to, and experience of, the family violence service system.

These programs demonstrate that early intervention legal assistance empowers women with information about their legal rights and legal options, rather than just contemplating legal advice as part of the crisis response. Intervening early with legal advice can be pivotal in

reducing the burden on women and children to navigate a complex legal system in seeking safety from family violence or upholding their rights after separation. It is because it gives women time to consider their options, make decisions based on safety and hopefully inherent in this will be the reduction of harm to themselves and their children.

Early intervention legal advice provides a response to the needs of women experiencing family violence who may not yet need representation at Court or who may not yet need or want to apply for an Intervention Order. However, many women only consult a lawyer or receive a referral to a lawyer when they are already at crisis point - they have a court date or their safety is at risk due to escalation of their partner's behaviour. This may be due to myths or perceptions about:

- lawyers only being needed when one has to attend court;
- the types of assistance a lawyer can provide; and
- what 'the law' is regarding a particular subject (for example, many people have perceptions about how parenting arrangements would be determined in Court, but these perceptions can often be inaccurate).

Early intervention legal work is able to provide advice, strategic guidance and, importantly, the opportunity for empowerment with information, choice and the ability to make decisions about safety without the stress or pressure of a crisis or court date.

In ECLC's experience with *Mabels*, early intervention legal advice is often most critical when it identifies unmet legal need. In the context of family violence, this means women access legal advice earlier than they otherwise would have, and have the opportunity to **change their trajectory** because they have gained knowledge about their and their children's rights as well as power and control dynamics and the associated risks. ECLC has produced a report, *It Couldn't Have Come At A Better Time*- which documents the voices and experiences of women who have benefitted from early intervention legal assistance in a health justice context.¹

To date, the efforts to integrate services in the Hubs have not incorporated a legal focus. This means that women miss a vital opportunity to obtain critical information about their rights and safety, even if they don't separate until a later time. Such critical advice can include information about Child Protection, property rights, evidence-gathering to support Intervention Order applications or care arrangements at Family Law.

The *Family Violence Outcomes Framework* is clear in its emphasis on the importance of intervening early to reduce harm, protect children and empower victims of family violence.

¹ https://www.eclc.org.au/wp-content/uploads/ItCouldntHaveComeAtABetterTime-MABELS_EasternCLC.pdf

It is also clear in outlining the need for services to be “accessible and available in the right place at the right time”, as well as being “person-centred”.

On the basis of ECLC’s experience in operating programs structured to provide early intervention legal advice in family violence matters, it is ECLC’s view that the Hubs would be substantially strengthened through the embedding of legal advice as part of their response.

It is important to note, however, that having legal advice embedded in the early intervention response is more than simply legal advice at an earlier time. It is also more than simply a referral to a lawyer or legal service. It needs to be delivered as part of the integrated service offered through the Orange Door service model, with any such model requiring proper planning, supporting mechanisms and review (for more detail, see discussion regarding integrated practice models).

The following case studies illustrate the critical difference which is made through early intervention legal advice, provided as part of the health justice partnerships which are offered by ECLC.

Case Study

Early intervention legal advice – antenatal setting

During her first trimester, Helen attended a routine check-up at hospital with her midwife, Laura.

During the appointment, Helen revealed she was feeling “a bit stressed” due to her partner’s mood swings. Laura asked Helen whether she felt safe at home. Since becoming pregnant, her partner had changed – he could “snap” at the smallest thing. Laura referred Helen to the hospital’s health justice partnership lawyer. Helen had a confidential appointment with the lawyer at the hospital. Helen described her partner’s violent and controlling behaviour. The most recent incident of violence had shaken her, as she had only just found out she was pregnant and he knew this. Helen told the lawyer she was terrified he would be violent again.

During the appointment, the lawyer advised Helen that it was not just the physical violence that was against the law - her partner’s controlling behaviours and aggression was considered family violence too.

The lawyer advised Helen how to apply for an Intervention Order (IVO), her rights in family law if she left the relationship and answered Helen’s questions about registering the baby’s name at birth. The lawyer also connected Helen with a family violence advocate who helped Helen with strategies aimed at keeping her safe whether she remained in the relationship or decided to leave.

As her pregnancy progressed, Helen decided to separate from her partner. She saw the lawyer again, who helped Helen to complete her application for an IVO against her partner. Helen was successful in obtaining her IVO.

The availability of the lawyer at hospital meant that Helen sought advice earlier than she otherwise would have. However, it was more than just advice earlier in time. Helen was empowered with knowledge about her legal rights and information about how to keep herself and her baby safe. She was empowered with choice and had more time to make decisions for herself and her baby, rather than waiting until the situation deteriorated. She had a safe and accessible space to access the advice she needed at critical times.

Police response

Despite investment in police training and attempts to ensure police respond in a trauma-informed way to victims and perpetrators since the Royal Commission, unfortunately there are still several aspects of the police response which fail both victims and perpetrators of family violence. ECLC's key concerns in the police response are:

- Inconsistent responses to reporting breaches of Intervention Orders;
- Misidentification of the perpetrator of family violence;
- Unwillingness to act on new information after a Family Violence Safety Notice is issued; and
- Lack of an intersectional analysis in the response to victims.

Unfortunately, for ECLC's clients, misidentification of the perpetrator of family violence has become a significant issue in the family violence service response, particularly for women from CALD communities. It is ECLC's view that, the more marginalised you are, the more likely it is that you will be misidentified as a perpetrator because police have less capacity to deal with complex circumstances, for example:

- if you need an interpreter
- if you have complex mental health symptoms/behaviours; or
- if you are a member of the LGBTIQ+ community; and
- particularly if you more than one of these intersecting vulnerabilities to fall within more than one of these broad groups.

Police culture needs to shift through sustained training and the leading of cultural change from the top. Police need to take a more an intersectional approach as the complexity of a victim's circumstances should not impact upon their voice being heard.

The following case study demonstrates some of the above concerns. It highlights an overarching concern that significant work is still needed to address police culture to ensure a police response which is:

- Robust;
- Consistent, yet focused on the needs of victims and their particular circumstances;
- Trauma-informed; and
- Able to take account of intersectional oppression.

Case Study

Misidentification of perpetrator

Mae and Colin were international students who had been in a relationship for a year.

Late one evening, Colin and Mae were arguing and Colin became violent. He held Mae up against a wall with his hands around her neck. Mae managed to break free and, desperate to try to stop Colin's aggression, she picked up a small vase on the coffee table and threw it at the wall next to Colin. Colin continued to verbally abuse Mae, and pressed himself close to her face to threaten her.

Neighbours called the police.

The police spoke with Colin and Mae in separate rooms, but Mae's English was not as good as Colin's. Mae didn't understand much of what was being said, however, she used her limited English when they asked her questions and tried to explain what had happened. She was very scared. She didn't know the word in English for choking but she put her hands around her neck to indicate what Colin had done.

Colin instructed the police that Mae had been violent and threw the vase at him. When asked about having his hands on her neck, Colin said he had his hands on Mae at one point during their argument to hold Mae back from hurting him.

The police did not arrange an interpreter on the phone for Mae or Colin, as the police believed Mae and Colin understood and could communicate satisfactorily.

Due to Colin's statement alleging Mae's violence, and Mae's inability to communicate clearly to the police what had actually taken place (as no interpreter had been provided), the police issued a Family Violence Safety Notice against Mae and she was required to leave the apartment that night.

Mae was terrified and did not really understand why she had to leave her home. She sought legal advice. With an interpreter present, Mae advised the lawyer what had happened that night with Colin. When the lawyer called the police informant and

explained Mae's version of events, the informant dismissed the new information and stated that he was satisfied Mae could communicate adequately that evening.

Mae's duty lawyer at Court again sought to negotiate with the police prosecutor on the day of Mae's first mention date. However, the police prosecutor reviewed the police brief and advised that based on the information from the prosecutor, they would proceed with the application.

Mae decided to consent to an Intervention Order being placed against her, as she felt she had no other option. She was terrified at the prospect of going to a court hearing, as she did not think that she would be believed.

The police placed greater weight on Colin's version of events, simply because he could articulate himself more clearly that night. However, had an interpreter been present or at least arranged by phone, the police would have had a better chance of understanding that Colin was in fact the perpetrator and his behavior was a significant risk factor. As is well known, choking is considered a significant risk factor for much more dangerous and devastating outcomes in family violence.

Distressing enough was the police response on the evening by failing to obtain Mae's proper account of events. However, even after greater detail was brought to the attention of police, the police's main focus was on defending the police's original characterization of events, rather than actually being concerned with the truth of the matter before them. In the face of the fresh information from her lawyer, the police should have withdrawn the Family Violence Safety Notice against Mae and investigated the new evidence put forward by Mae and pursued possible criminal charges alongside an Intervention Order. The police also should have ensured that Colin received support to access relevant behavior change programs. Instead, the police demonstrated greater interest in the efficiency of processing the case. This attitude was again reflected on the first mention date with the police prosecutor.

This case study demonstrates glaring deficiencies which remain in the system, particularly in the way the system itself disempowers the very people it should be protecting. Mae's voice was effectively silenced by a police culture which, at least in this instance, accepted intransigence over a determination to protect the most vulnerable.

Case Study

Early intervention legal advice – early childhood setting

Cara's MCH nurse referred her to the Mabels lawyer who provided advice at the maternal and child health centre. Cara was feeling anxious about her partner's aggressive discipline of their children who were 2 and 4 and he also constantly criticised

Cara, belittling and undermining her in front of the children. She felt increasingly alone, as her partner discouraged catch-ups with her family and friends.

Cara didn't think of her partner's behaviour as family violence. In the appointment, the Mabels lawyer and family violence advocate spoke with Cara about the definition of family violence, and the dynamics of power and control that were operating behind her partner's behaviour. The Mabels lawyer and advocate discussed the rights of Cara and her children to feel safe and supported, rather than being made to feel denigrated and isolated. They also advised Cara of the impact of family violence on childhood development. The Mabels lawyer advised on applying for Intervention Orders as well as general processes around family law children's arrangements and her rights in property division, in the event that Cara ever did consider separating.

After her appointment with Mabels, with the help of some strategies from the family violence advocate, Cara spoke with her partner about some counselling for him and how his behaviour was making her feel. He dismissed this and blamed Cara for any problems they were having.

Cara ultimately decided to separate, after considering the impact of her partner's behaviour on her and the children. With further help from the Mabels lawyer and advocate, Cara made a safety plan and was able to separate having made preparations to protect her financial position and also to reduce the impact of separation on her children.

The advice from Mabels came at a critical time for Cara – she was empowered with the advice she received and was able to calmly consider the best options for herself and her children. Her instinct told her that her partner's behaviour wasn't right, and the lawyer and advocate provided her with the tools to navigate a safer path forward.

Elder abuse

The Royal Commission acknowledged the need for more work in the area of Elder Abuse (Recommendation 153). Based on ECLC's longstanding involvement across the continuum of prevention, early intervention and response work in the area of Elder Abuse, there are some significant areas which require urgent attention.

Integrated Models of Care

ECLC welcomes the limited investment in integrated teams to address elder abuse within health settings. However, ECLC has concerns that the model doesn't meet the needs of participants. The program seems to operate as a response-based program, and the emphasis on mediation is generally not appropriate as a tool to be used in resolving disputes or conflict

where elder abuse is occurring and there is a likely power imbalance between the older person and the perpetrator. ECLC's view is that mediation is likely to be a useful tool in early intervention work or future planning, but not once elder abuse is entrenched in the relationship and the older person really needs strong advocacy to ensure their interests and views are protected from further abuse.

Early intervention programs are significantly strengthened if legal advice is integrated into that response. This has certainly been ECLC's experience with its Elder Abuse programs. By way of brief summary, ECLC operates the following Elder Abuse response programs, both federally funded under the AGS Elder Abuse Service Trials:

- [ROSE](#): A legal, financial and integrated support service providing support for victims of elder abuse; and
- [ELSA](#): A Health Justice Partnership providing integrated advocacy, legal and financial advice on elder abuse.

In ECLC's experience, having legal advice integrated into an elder abuse response service is critical. Providing legal advice with the support of an integrated team also ensures that the older person can be supported to navigate the path or option which is right for them. It also strengthens the capacity of the program to both empower the older person with information and options earlier in time, but also reduce harm to the older person.

ECLC would strongly recommend that a legal framework to be built into the Integrated Model of Care currently in place.

Further, while this model has some potential, the very low level of funding in the pilot sites and narrow view of its role has the risk of undermining well-intentioned efforts.

ECLC and its partners active approaches to government to partner with and provide support to the (larger) Service Trial have been unsuccessful, leading to a lack of integration and co-ordination between state and commonwealth efforts.

Case Study

Elder abuse integrated practice

John is a retired charity worker, who has provided free housing in his own home and his neighbouring property to people suffering from addiction.

“Greg” was living on-and-off with John for three years. He also invited his girlfriend, “Angela”, to stay and John agreed to her living rent-free in his property next door. Both Greg and Angela are addicted to methamphetamine and neither contribute to the household (financially or otherwise). Greg experiences psychosis and acts out in unprovoked aggression. Angela steals items of food and small personal items of value. They have broken items of furniture.

John had called police during previous altercations with Greg but this resulted in John suffering retaliatory physical abuse. Greg made threats to cause property damage and kill John’s cat. When police made applications for intervention orders, Greg did not attend the hearings. Police have also responded to calls regarding the drug use in the home. Police no longer attend the home due to the numerous calls.

John’s health was deteriorating but service providers refused to enter the home while two drug-addicted persons were in residence. Due to the increasing volatility, John was afraid that if he asked them to leave or called police again, Greg would retaliate and break into his home or kill his cat during a psychotic episode.

John was referred to ROSE by a social worker at Box Hill Hospital.

John & ROSE

The ROSE team (Community Lawyer, Financial Counsellor, Advocate) met with John and identified John’s legal and social support needs. The Community Lawyer and Advocate then provided integrated legal and case management.

The Community Lawyer drafted letters to Greg and Angela on John’s behalf, which John printed on his own letterhead and signed, formally asking them to vacate within a specified period. The Advocate gave John a list of housing referral options that John could provide to Greg and Angela with the letter to help them find alternate housing.

Due to his deteriorating health, John was hospitalised while receiving case management support from ROSE. With John’s consent, the team followed up with John’s support about person during this period supports for John on discharge from hospital and the issues with Greg and Angela.

Outcome

On receiving the letter drafted by the ROSE Community Lawyer, Greg and Angela left John's home with minimal discord and John returned home from hospital without the stress of returning to violence.

John's support person reported that John had improved health and mobility following his last hospital admission. John now lives peacefully in his own home and can access service providers for assistance with his medical needs.

Funding for Elder Abuse services

ECLC supports the continued funding of Seniors Rights Victoria, the state based elder abuse community legal centre. However, this funding goes only a small way in meeting the extensive and now substantially identified needs experienced by victims of elder abuse.

Elder Abuse is an insidious, hidden abusive behaviour that one system (such as the family violence system, or the legal system) of itself is unable to resolve. ECLC therefore advocates for sustained and much expanded funding for the work of organisations which address Elder Abuse across a range of different areas including prevention, early intervention and response.

The government is to be commended for the work it has undertaken in primary prevention and awareness-raising around Elder Abuse, particularly the work by Respect Victoria in its awareness campaigns. However, as is entirely expected, the result of such work has seen increased referrals to services without any significant funding to respond to this need generated by the community awareness campaign.

Whilst ECLC is of course supportive of the government's work in this regard, services need to be resourced appropriately to be able to cope with the increased demand to their services as a result of awareness-raising in the community.

Unlike intimate partner violence, government initiatives and funding in relation to elder abuse following the Royal Commission appear to have overwhelmingly focused on prevention activities. It is also clear that mainstream family violence response services do not yet have the models, understanding and capacity to effectively respond to elder abuse, particularly given the differently gendered nature of this abuse,

Gaps in the continuum in addressing Elder Abuse – primary prevention/early intervention/response

Through ECLC's work in the Elder Abuse response programs, there is a deep connection between the work in responding to Elder Abuse and the work in primary prevention and early intervention of Elder Abuse. At times, there is significant overlap across these aspects of the

continuum. Indeed, sometimes response work needs to carry with it a prevention and educative message too, as there have not been any other opportunities for the educative message to be received.

The Eastern Elder Abuse Network (EEAN) was established in 2010 and has since grown to a membership of over 150 people. This includes broad representation from over 50 member organisations, some including: Local Government, Community Health, Legal Services, Police, Aged Care, Hospital, Women's Health, Primary Care Partnerships, State and Government Departments, Family Violence, Finance, Ethno-specific and Multicultural Agencies, and other specialist services/organisations.

Over time, the Network has grown and evolved with strong support and expertise of partner organisations. In late 2019, the EEAN was restructured to provide a more strategic approach working across the spectrum of primary prevention, early intervention and response. This approach is proving very effective, while recognising the ongoing interplay between these areas of work

The following areas are of most concern to ECLC and its partners at present.

Unmet legal need – advice on Wills and Powers of Attorney

ECLC receives a significant number of requests for assistance for advice on, and the drafting of, Wills and Powers of Attorney. Unfortunately, this is not an area in which ECLC – or any other service - is funded to provide assistance.

This is an area of law where older people are particularly vulnerable to being unduly influenced and pressured. Funding to provide free legal advice and assistance in this area would address a critical gap in the current system, thereby meeting an unmet legal need and providing a critical point for early intervention legal advice for older people. It would also provide a critical opportunity to undertake early intervention work, by providing education, information and advice to older people around elder abuse and how to protect themselves.

Early awareness raising and education in the best ways to protect themselves and knowing who to ask for help are critical steps in preventing elder abuse.

Future planning

Funding is necessary to address the cultural shift and knowledge base within the community regarding future planning. This area is critical as part of prevention and early intervention work, as building individuals' knowledge and shared understandings not only empowers individuals but it also helps to create the cultural shifts necessary to expose what is currently potentially a largely hidden problem of elder abuse.

The Office of the Public Advocate was funded to produce materials on future planning with the Law Institute of Victoria. A set of materials on this subject is an excellent resource, but it does not do enough to address the cultural shift required. Funding is needed to encourage people, especially older people, to have early discussions about what is considered difficult subject-matter: death planning, Wills, Powers of Attorney, and the myriad other issues which have a legal/financial/emotional implications.

A public campaign is needed on these issues, to bring these discussions out into the open and encourage a cultural shift across the community.

Financial abuse service trials – Victoria Police

The challenges which ECLC has identified in Victoria Police's responses to elder abuse have included a tendency to treat elder abuse as a private civil issue leading to an unwillingness to get involved. There have also been failures to conduct adequate welfare checks.

The financial elder abuse trials (Recommendation 155) are therefore a positive step and an excellent initiative to bring the key stakeholders together, build knowledge, shift cultural understandings within the police and build relationships between key stakeholders and local police and detectives.

ECLC was invited to support these trials and has been actively involved since before their inception.

Once learnings have been made on the best practice approach regarding this initiative, ECLC supports a widespread rollout of this program so that police across the State can be equipped with the right training in identification and intervention regarding financial elder abuse.

Training for professionals in recognising and responding to Elder Abuse

ECLC commends the training being implemented by Eastern Health as part of the Victorian Government's *Strengthening Hospital Responses to Family Violence project* (Recommendation 95). This is critical work providing training on elder abuse to workers in the healthcare setting. Such training has a potential impact at the primary prevention, early intervention and response levels.

While such training is fundamental, other settings or professions are in just as critical need for such training to build their capacity to respond to elder abuse.

ECLC recommends that training be provided on a broad scale to health professionals outside the hospital setting, in particular GPs, dentists and other allied health professionals. Beyond the healthcare setting, other professionals should also receive such training, including lawyers, accountants and financial advisers. These professionals hold positions of trust and therefore potentially have the capacity to hold significant influence with older people. With

older people more likely to be isolated and potentially less mobile, it is important for these professionals to know how to identify the warning signs and the best ways provide specialised advice and support for the older person when they might be one of the few contacts outside the home at any given time.

IMPACT OF THE COVID-19 PANDEMIC

What has been the biggest impact of the COVID-19 pandemic on your organisation or sector? How have the services that your organisation or sector provides had to change?

Similar to other community organisations, ECLC has noted the increase in challenges for people experiencing family violence in accessing services. Whilst all service providers have adapted as best as they can in this current environment, the limitation in face to face meetings and subsequent reliance on technology has led to increased isolation for women experiencing family violence. This is particularly the case for women who have limited access to technology and are isolated from appropriate community supports. As a result, ECLC is very concerned about the increase in safety risks for women experiencing family violence.

The court system response across Victoria has highlighted the independence of Magistrates' Courts in Victoria and the limitations when a streamlined approach to adapting services is required. ECLC understands that Magistrates' Courts across Victoria had extremely different approaches to the changed environment.

The RMC has been responsive in working quickly with local service providers to adopt streamlined, clear approaches for referrals. As the pandemic has continued to impact upon the ability to provide face to face services within the court precinct, the RMC has adapted its responses accordingly. ECLC understands that this is not the case with all Magistrates Courts across Victoria, with some courts compromising the safety of court users, particularly victim survivors, by making them wait in their cars in the car park until they were called into court. (Perpetrators have also been asked to wait in their cars.) There was no security measures in place in some of the car parks. The ability to respond appropriately appears to be impacted not only by the court's infrastructure, but also by the ability of individual courts to value local partnerships and service provision for the benefit of the community members who are court users.

It is ECLC's view that the Magistrates' Courts could benefit from having state-wide streamlined approaches to crisis such as Covid-19 in service provision adaptation and communication. This would ensure certainty across the state of a clear process for service provision and most importantly, risk and safety management.

Has the COVID-19 pandemic highlighted any strengths or weaknesses in the family violence service system?

For ECLC, the pandemic has highlighted the crucial role of integrated services, in particular Health Justice Partnerships. ECLC has benefited greatly from the expertise of its partners in its various Health Justice partnerships to ensure that clients are able to continue accessing legal assistance while attending health appointments. The Health Justice Partnerships have also played a crucial role in ensuring standards of hygiene and health risk management are followed and communicated to the legal centre, based on their expertise. Furthermore, integrated practices which include a family violence, elder abuse advocate or financial counsellor have supported and assisted clients to maintain contact with the legal centre during these challenging times. It is ECLC's experience that but for the mutual clients/patients accessing the health services (which are part of an existing health justice partnership) it is likely that the client/patient would not know how to access information about their legal issue (family violence and elder abuse) that is impacting greatly upon their health.

Family violence services play a significant role in the service system. However they can not (nor should not have to) address or resolve all issues that affected community members are facing. Hence, it is the family violence services who have mature, adaptive and trusting relationships with their local agencies and partners who are able to not only reach women experiencing family violence, but also are able to ensure that these women are able to successfully navigate the service system at this time.

CONTACT

ECLC welcomes the opportunity to discuss any of the issues raised in the body of this submission. For any queries, please do not hesitate to contact:

Belinda Lo
Director Legal Services & Principal Lawyer
Eastern Community Legal Centre
0423 731 821
belindal@eclc.org.au

www.eclc.org.au