



Court Network

A grayscale photograph of a woman from the chest down. She is wearing a light-colored collared shirt under a dark cardigan. A lanyard with the Court Network logo and the text 'COURT NETWORK' is around her neck, holding a clear ID badge. The background is blurred, showing other people in a professional setting.

Court Network Submission to the Department of Justice and Regulation Access To Justice Review

February 2016

Executive Summary

Court Network welcomes the opportunity to provide this submission to the Department of Justice and Regulation (DoJR) Access to Justice Review.

Court Network provides non-legal information, support and referral as a community service provided within law courts. Our role is complementary that provided by legal and other services within the courts and tribunals system.

Our submission focuses on options for providing better support to self-represented litigants through the Victorian justice system (Term of reference 9).

With over thirty-five years experience in providing support to court users within the Victorian courts and tribunals system, the vast majority of whom have no legal representation Court Network is well placed to inform considerations about ways to improve support for this cohort of court users.

We provide critical services that support the emotional well-being of more than 110,000 community members participating in courts and tribunals each year. Our services also support the efficient running of the court by providing information about court processes, and assist court users to find their way around court infrastructure, to understand court processes and to access a range of relevant services.

From residential tenancies and guardianship matters in VCAT where family violence issues are present to the huge number of people who are participating in Family Violence Intervention Order related processes in the Magistrates' Courts without legal representation, Court Network is there as a vital non-legal support infrastructure in the community's access to justice.

A core element of the Court Network service model is reaching out to all court users that are present on the day: victims, witnesses, applicants, respondents, family, and friends with the offer of support. This unique service and position 'front of house' in law courts and tribunals allows us to be the 'eyes and ears' of the courts system and the experience of the community in accessing justice.

The overwhelming majority of court users that Court Network supports each year do not have legal representation.

It is from this unique standpoint that we contribute to the Access to Justice Review.

Our submission stressed the importance of taking a holistic approach in improving support to self-represented litigants, understanding that alongside the legal needs of court users, they will have a range of often complex support needs.

Our submission also details our experience and reflections on providing information, support and referral services in Victorian courts and tribunals, the difficulties self-represented litigants face in accessing justice and the complexity of their needs.

This includes the importance of understanding the impact of family violence for court users, both those people appearing at court for family violence related matters, and also for court users attending court for non-family violence related matters. Lack of awareness of the risks and complexities for the impact of family violence on the lives of court users is to risk the justice system and court support services doing further harm to victims of family violence.

We provide information about our efforts to trial more intensive support models to unrepresented litigants in the Family Law Courts in Melbourne, at Sunshine Magistrates' Court for women attending court for family violence related matters, and in VCAT in partnership with Monash University Faculty of Law students as examples of innovation that better supports self-represented litigants and their access to justice.

Finally, we are aware of, and support technology based solutions however we urge a focus on the most disadvantaged members of the community who for reasons of lack of trust, literacy, poverty, homelessness and other issues are not able to avail themselves of these resources.

We highlight the need to ensure that any tools, strategies and policies implemented to improve support for self-represented litigants are tailored to the specific needs of court users from culturally and linguistically diverse communities (CaLD) and for whom technology based solutions offer limited value.

A summary of our recommendations:

Recommendation 1: Acknowledge and support the role of Networkers in providing information, support and referral services for people appearing without legal representation within the Victorian courts and tribunals system as necessary support infrastructure.

Recommendation 2: Acknowledge and value the court based social support provided by Court Network in responding to the many challenges facing courts and tribunals, including supporting unrepresented litigants with complex needs.

Recommendation 3: Strengthen support for the provision of court based social support for unrepresented litigants, such as that provided by Court Network including:

- Support provided by trained volunteers
- The availability of user-friendly, plain language legal information and procedural guidance resources.

Recommendation 4: Develop and implement a comprehensive workforce development program to ensure that all professionals working within the courts and tribunals system have a sound understanding of the underlying causes of family violence, and the various complexities and risks associated for unrepresented litigants who may be experiencing family violence and/or appearing at court for family violence related matters.

Recommendation 5: Support and encourage new approaches to providing non-legal support to unrepresented litigants with the capacity to continue such initiatives where they can demonstrate improved outcomes and effective and efficient use of resources.

Recommendation 6: Introduce cultural awareness training for all professionals working across the courts and tribunals system to enhance the cultural responsiveness of all professionals working with self-represented litigants from CaLD communities.

Recommendation 7: Ensure that technology based solutions are accompanied by strategies to support people who cannot access or who have limited ability to access such initiatives.

1. Introduction

About Court Network

Court Network was founded in 1980, in a small court in the Melbourne suburb of Prahran after Carmel Benjamin AM saw a gap for people in contact with the justice system. The service has grown significantly since that time with volunteers operating out of almost every court in Victoria and being one of the only services to do so. In Victoria, Court Network volunteers (Networkers) are available in all major metropolitan and regional courts, including the Children's Court, Magistrates' Court, County Court, Supreme Court, Coroner's Court, and the Victorian Civil and Administrative Tribunal (VCAT).

Court Network is also available in a number of Queensland courts, including the Supreme, District and Magistrates' Courts in Brisbane, Cairns and Townsville, and the Queensland Civil and Administrative Tribunal. Since 1990, Court Network has operated in the Federal Circuit Court and Family Court of Australia in the Melbourne and Dandenong registries; and, since 2006, in the Brisbane Commonwealth Law Courts.¹

Court Network's service is an important component of accessing justice, particularly for vulnerable and disadvantaged court users who may be attending court for the first time, be unfamiliar with court rules and processes, lack knowledge about what is expected of them, feel frightened and unsafe, be representing themselves in a matter, be challenged in being able to understand and participate effectively in the court processes, and/or be in need of someone to listen, provide support, and to assist in navigating the court system.

Our free, non-legal court support service is delivered by over 400 highly trained volunteers providing non-judgemental, confidential, respectful support, information and referrals to all court users, including applicants, respondents, victims, witnesses and defendants, and their families and friends who attend with them. In 2014-15 Court Networkers assisted 116,187 court users accessing courts and tribunals across Victoria.

About this submission

In this submission we focus on **Term of Reference 9: Options for providing better support to self-represented litigants through the Victorian justice system**. We draw on our vast experience of providing support to court users over many years, in all court jurisdictions, including the direct experience of our volunteer workforce, the collective expertise of our (relatively) small paid workforce, relevant research and evaluation findings. We have included direct feedback from our stakeholders and a small number of case studies to illustrate the impact of the information, support, and referral services provided by Court Network.

We note the concerns raised in the Productivity Commission's *Access to Justice Arrangements* report that many self-represented litigants, do not understand the processes involved in undertaking legal action and appearing in a court or tribunal, and that in some circumstances they can be disadvantaged would benefit from further assistance.²

We also make a range of recommendations for the Department's consideration.

Terminology

Despite having the right to self-representation, many court users do not have representation because they are unable to access or afford legal representation and advice. In many cases they do not 'choose' to be self-represented. Rather they are unrepresented due to a range of financial and personal circumstances. For these reasons, Court Network prefers to use the term *unrepresented litigants*, and we use this term interchangeably with the term *self-represented litigant* throughout this submission.

We also use the term 'court user' which refers to people appearing in matters in courts and tribunals.

¹ Court Network services ceased operations in the Brisbane Commonwealth Law Courts on 27 June 2014 following a decision by the Attorney-General not to extend funding to the service.

² Australian Government Productivity Commission, *Access to Justice Arrangements. Productivity Commission Inquiry Report. No.72, 5th September 2014, p.37*

2. Providing services to unrepresented litigants in Victorian courts and tribunals

How we work – services we provide

Court Network is committed to ensuring that all court users have the opportunity to access the services provided by Court Network, within the availability of services offered.

Our volunteer Networkers are trained to provide tailored support, information and referral services on an impartial and non-judgemental basis to all persons, including applicants, respondents, victims, witnesses and defendants, and their families and friends who attend courts and tribunals with them.

Any court user is eligible to receive services from Court Network, and many court users aided by Court Network have no legal representation. This is particularly so for court users attending Magistrates' Courts, VCAT and Family Law Courts.

Court Network offers information, support and referral to court users via:

- Telephone referral and support services
- Pre-court: including tours of the court before hearings, explain procedures and how the courts operate, providing parties to family law proceedings with access to a secure waiting room for those feeling unsafe
- In-court: sitting with court users during court hearings (and in remote witness facilities), assisting people to feel safe whilst at court
- Post-court: enabling court users to understand the range of supports that exist outside of the court (such as specialist family violence services, mental health, drug and alcohol, and housing), referring people to other support services in their local area
- Information desks, staffed by Networkers, provide court information at selected courts.

Networkers connect with court users requiring assistance predominantly through an active outreach style – 'working the floor' – on the day, introducing themselves to court users who are entering the court or waiting for their matter to be heard. They also accept referrals from court officials and service organisations (either on the day or prior to the court matter being heard). Court Networkers are highly visible and well-known to court staff and other services operating at the courts and tribunals.

Court Network does not provide legal advice or representation.

Many of the court users supported by Court Network in the Magistrates' Courts, Family Law Courts and VCAT have no legal representation and would otherwise have faced court with little to no understanding of what was required of them, or of other options that may exist in terms of gaining access to legal, community or social assistance.

Extensive and ongoing professional development is provided to Networkers to ensure quality and consistency in their practice. This is important in ensuring that the wider sector can have confidence in the complementary role that Court Network can play. Professionally qualified program managers are responsible for the overall management of the program, support and supervision of Court Network volunteers, and ongoing communication with court personnel and community agencies.

Case study 1: VCAT

It's all about information, support and referral

She was in tears, distressed, embarrassed and apologetic. Her tribunal hearing had finished and there was a court order that required her to pay a sum of money on a regular basis to cover damages on her rented house. Talking with her, I discovered that the hearing was the least of her problems. She was extremely anxious about her son who was living with the impact of a degenerative disease affecting his hearing and sight. He had been removed from her home much to her ongoing distress. She felt extremely unsafe in the house and urgently needed to move to a safer environment but in so doing would jeopardise any chance of getting her son back as it would break parole conditions.

She did not have a case manager and calls to the police, and various other support agencies were to no avail. She was in a tangled web of problems that all intersected. Her comment about her fears of 'ending up in a body bag' I took seriously and so I went looking for a duty lawyer. As I waited in the queue for the lawyer, she sat on the steps in the sun and had a cigarette. Finally introductions were made and I left. Sometime later, she arrived upstairs to thank me – a little more relaxed and hopefully with a plan of action.

As a Networker, it's all about information, support and referral. The information aspect was difficult because her needs were so specific but simple information such as Centrelink crisis payments was extremely helpful to her. It highlighted for me that the information we provide is not necessarily used in isolation by court users– it may in turn affect other areas of support for better or worse. The support given allowed her to be listened to and enabled her to perhaps function a little more positively, by envisaging a way through all this.

We dip in and out of people's lives for an hour, an afternoon, a day, but in so doing we sometimes connect with them at times when they are at a point of extreme desperation and vulnerability which may be rarely seen by others.

As told by a Court Network volunteer

*"I have been a judge for 28 years and so I have seen Court Network in the Coroner's Court, the State Magistrates' Court, and for 18 years in this Family Court. I can't imagine a modern court operating without this resource and in this court especially given the emotional overlay of the issues." **Family Court Judge***

Acknowledging Court Network as an existing service for self-represented litigants

We wish to bring to the attention of the Department the services provided by Court Network as described above. We note the absence of any reference to our services in the *Access to Justice Review: Background Paper – Self Represented Litigants*.

Whilst we acknowledge that we do not provide legal advice or representation, we do provide critical services that support the emotional well-being of court users, support the efficient running of the court by providing information about court processes, and assist court users to find their way around court infrastructure, to understand court processes and to access a range of relevant services.

Recognising the value of court based social support: The value of Court Network

In May 2012, Court Network commissioned KPMG to undertake research to establish the 'value for money' of investing in Court Network as a provider of non-legal court support services. The research was focused on determining the value of volunteering assistance to the Commonwealth registries in Melbourne, Dandenong and Brisbane using a cost-benefit analysis. The research found that Court Network is creating real value at court. At a minimum, Court Network returns benefits of \$3.20 in Victoria and \$3.40 in Brisbane for every \$1 funded in the Commonwealth Courts.

The research also found that there were quantifiable benefits realised from Court Network's services including:

- The efficiency from court cases taking less time to hear on the first court date and in interim hearings efficiencies related to a reduction in the attendance rate for court cases (which refers to the number of times a court case returns to court for hearing)
- Efficiencies related to outside the courtroom for court staff in not having to manage issues that are outside their main duties
- Benefits related to the community, including savings to litigants who would need to take a leave of absence from work to repeatedly attend court hearings if not better prepared and informed about the financial and emotional costs of further filings
- The avoided legal costs to the community for court cases not requiring an unnecessarily long trial
- The value of time spent by Networkers providing unpaid support to court users.

"Good Networkers can make an important difference because clients become easier to work with and are better prepared." **Legal service provider**

The cost-benefit analysis undertaken by KPMG was conservative as it did not capture a range of other *qualitative* benefits generated by Court Network due to the short time-frame of the research. These benefits included:

- Court users experiencing greater wellbeing from:
 - the emotional support and safety provided
 - not being subject to any secondary trauma that results from being in court
 - being referred to the appropriate post-court support
- The time efficiency from Networkers locating court users and ensuring that they enter the correct courtroom. Without Networkers, court users could miss their court hearing, which may require a reschedule or entail a decision being made in their absence
- On the infrequent occasions where police are contacted, the avoided cost of police intervention to remove court users who have become disruptive, threatening or violence as a result of Networkers pre-emptively managing court users and being a calming influence on situations before they escalate
- The benefit to the community and government from having an improved public perception of the justice system
- The enhanced effectiveness of service providers such as duty lawyers and specialist support services
- Efficiency gains from directing/assisting court users on the forms and administrative tasks requiring to be completed.

"Prior to Court Network, there was no service within the court to assist any litigants regarding information, directions, comfort, wanting somebody to talk to. They were confused, agitated, and would come to the counter. Staff at court have very defined roles and it was not the role of counter staff to provide this type of assistance." **Court/registry staff**

KPMG also identified important benefits of the Court Network service in relation to court users, court staff and legal services, including that Networkers:

- **Are of greatest value to unrepresented litigants** who do not have the information or support that they would otherwise receive from a lawyer and who may fail to effectively engage in the court process
- Improve the court experience for people in an environment that can cause anxiety, frustration and anger and in particular, play a key role in alleviating tensions and distress in cases involving family violence
- Improve people's perception of the court system by making the court process easier to navigate and providing information on how the justice system operates

- Enable court staff and duty lawyers to focus on their core roles and responsibilities and taking pre-emptive action to assist and manage issues and people before they become a significant matter that would otherwise require more drastic action.

Recommendation 1: Acknowledge and support the role of Networkers in providing information, support and referral services for people appearing unrepresented within the Victorian court system as necessary support infrastructure.

Recommendation 2: Acknowledge and value the court based social support provided by Court Network in responding to the many challenges facing courts and tribunals, including supporting unrepresented litigants with complex needs.

3. Testing an approach to provide more intensive support to unrepresented litigants in the Family Law Courts

During 2014, Court Network developed and implemented a project for strengthening our response to people who are unrepresented when attending a Final Hearing in the Melbourne registries of the Family Court of Australia/Federal Circuit Court of Australia. The two-year project, funded through the Legal Services Board Grants Program, has a focus on people whose access to justice is most compromised through not having adequate supports to assist them throughout the process of the Final Hearing.

The *Responding to the increased support needs of unrepresented litigants* project provides an enhanced model of support, by specially trained and experienced Court Network volunteers, to unrepresented litigants appearing at Final Hearings. The project is designed to:

- Increase opportunities for court users to feel prepared for the adversarial nature and procedural requirements of the proceedings and be better informed about their role and function within the court.
- Streamline the process for court users in accessing pre-hearing legal advice, developing pre-hearing and in-court support plans and coordinating the support/referral options related to other relevant services.
- Provide comprehensive support to unrepresented people who require assistance in court, such as sitting at the bar table if requested by the Judge, and helping to reduce anxiety and distress often experienced as part of the rigours of giving evidence and being cross examined.

The Project commenced on 15 September 2014 and provides formal referral systems, and streamlined support to ensure that court users who are without legal representation in child contact matters will have access to non-legal court support.

It is worth noting that family violence is a common feature of matters involving children at the final hearing stage which by their nature are matters that have not been able to be resolved through mediation or previous court hearings.

Experienced and specially trained Project Networkers are available to provide support to people who are attending a final hearing and who do not have legal representation, even though they may have had legal representation previously.

The Project enables Networkers to provide a comprehensive level of support to unrepresented people who require assistance. They can offer intensive in-court support such as providing information about court processes, and the option to sit at the bar table with court users (where the Judge gives permission for this to happen), helping to reduce the anxiety and distress often experienced as part of the rigours of giving evidence and being cross-examined. The Project

can also provide support to unrepresented litigants over consecutive days as final hearing matters may not be resolved or finalised in a single day.

During 2014-15, the Project has provided support to 64 unrepresented litigants, the majority of whose hearings were heard in the Federal Circuit Court. Women comprise 63% of unrepresented litigants supported.

Case Study 2: Family Law Courts

Case background

A mother of two children is attending for a final hearing attempting to finalise arrangements for her two children aged 6 and 10 with her ex-partner, their father. At the time of entering the courtroom the father had not yet arrived at court. The Judge determined to settle the case with final orders despite his non-appearance. Thirty minutes into the judge reading her orders, the father arrived. He was aggressive about the Judge's decision to restrict the father's time with the children to daytime only each fortnight and left the courtroom. Sometime later he returned and was argumentative towards the Judge.

The Judge noted that on more than one occasion the father has caused delays or not appeared at hearings. The children have both reported to the Independent Children's Lawyer that they fear their father.

Court Networker Intervention

The mother presented to the Court Network Office. She was upset and help was offered and accepted. A second Networker was introduced so that the offer of support could also be made to the father.

The mother was provided with the Court Network Resource Booklet, and needed calming and reassurance that she had followed all requirements and submitted supporting documents. The role of the Court Networker was explained to her. She was assisted to ensure that she was at the correct courtroom and to approach the Judge's associate to register her attendance at court for the hearing.

The mother was in an agitated state because she was representing herself and did not want to have to question her ex-partner. The Court Networker advised that she could address questions to the Judge rather than look at the father. The mother was also afraid because her car tyres and those of two family members had been slashed the previous evening and she was suspicious that her ex-partner had done this. This incident had been reported to police.

The Court Networker suggested that the mother write down what she wanted the Judge's order to be and what questions she might ask the father. This helped her to clarify her thoughts.

The Court Networker offered to sit with her at the Bar table if the Judge allowed. Together this request was made to the Judge's associate. On re-entering the court the associate reported that the Judge had accepted the request for the Court Networker to sit with the mother.

The husband arrived late and was aggressive and the mother was fearful of him. It was useful to have the Court Networker sitting between both parties blocking their eye contact, which reduced the mother's fear.

At the conclusion of the hearing it was clear that the mother was fearful that she would be followed home due to her past experience. The Court Networker spoke to security about an alternative exit to the main door. Security decided to keep the father in court to give the mother time to leave safely.

The mother was very appreciative of the support and assistance given.

As told by a Court Network volunteer

Guidance from the reference group

The Project Reference Group chaired by Court Network's Immediate Past President and former Victorian Supreme Court Judge, the Honourable Philip Cummins AM, is providing valuable strategic direction, leadership and advice to The Project. Members comprise representatives from the Family Court of Australia, Federal Circuit Court of Australia, Melbourne Family Law Registry, Women's Legal Service Victoria (WLSV), Victoria Legal Aid (VLA), Supreme Court of Victoria, and Court Network.

Experienced, trained Networkers

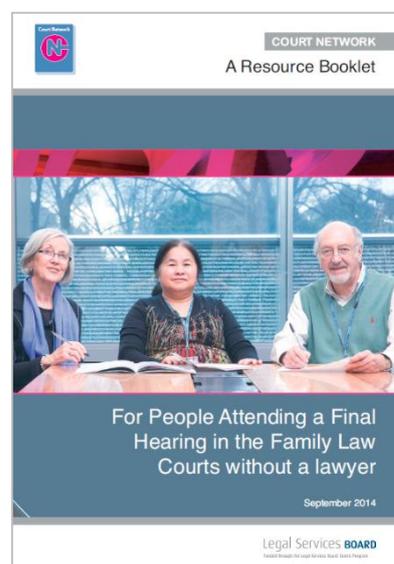
Around 20 experienced and trained Court Networkers are participating in the Project. This includes Networkers who already volunteer at the Family Law Courts, as well as Networkers from other courts. This Project team has continued to be involved in shaping the Project, by attending workshops, briefings and participating in a 'community of practice' to share their learnings in working with unrepresented people often with highly complex needs, as well as sourcing data for the evaluation.

Resource Booklet for unrepresented litigants

Through the project, a Resource Booklet - available online and in hard copy form, has been specially designed for people attending Final Hearings at the Family Law Courts. The Booklet is designed to assist unrepresented litigants in navigating the court process, including space for them to write their own notes of things to keep in mind and questions they may wish to ask.

The Resource Booklet has been strongly supported by stakeholders including legal practitioners, in both its content and availability. A second print run of the booklet has allowed widespread distribution. The Booklet is also available on the Court Network website: www.courtnetwork.com.au.

"The booklet is also an excellent tool for the support people accompanying the unrepresented litigant. I think they have a better capacity to take in the information because it is laid out in clear language and in an easy to navigate format." **Project Networker**



Extending the availability of the Resource Booklet to CaLD communities

Court Network identified the need to extend the availability of the Resource Booklet to CaLD communities, noting the added difficulty of a language barrier for many unrepresented litigants when dealing with the justice system. With the guidance of a Reference Group including representatives from Relationships Australia, the Family Law Court, Victorian Legal Aid, InTouch, AMES and Court Network staff and volunteers two languages were identified into which the Resources Booklet will be translated:

- Vietnamese - in response to data which indicated this group as one of the higher interpreter requests within the Family Law Courts and as having a higher level of low English proficiency, even though it is an established community
- Dinka – in response to a new and emerging community (Dinka speakers are likely to be from South Sudan), and one for which there are likely to be fewer resources currently available.

The publication of the newly translated resources (expected to be available in early 2016) will be accompanied by dedicated training for Networkers in best practice approaches to working with court users from a CaLD background. This will include practical support on developing inclusive networking practice tips to help ensure that people from CaLD communities are offered the most relevant support according to their needs.

Evaluation

An evaluation of the Court Network Project is underway, with a final evaluation report due in late April 2016. The evaluation is likely to assist further deliberations about options to improve responses to unrepresented litigants and we will be happy to provide the findings of the evaluation to DoJR.

The evaluation will seek to inform how elements of the model might be incorporated into the core Court Network service model, thereby increasing our ability to provide high quality support information and referral to unrepresented litigants across all court jurisdictions.

Recommendation 3: Strengthen support for the provision of court based social support for unrepresented litigants, such as that provided by Court Network including:

- Support provided by trained volunteers
- The availability of user-friendly, plain language legal information and procedural guidance resources.

4. Strengthening our practice: Understanding and responding to the complex support needs of unrepresented litigants

During 2015 Court Network began to intensify our efforts to strengthen our practice to ensure that we are providing consistent quality support that is responsive to the particular needs of unrepresented litigants. Practice wisdom from the direct 'on the ground' experience of our Networkers, contemporary research and understanding the impact of issues such as family violence, and our learnings from the piloting of new models of support are informing our volunteer training and recruiting, and our systems and tools to ensure that the services we provide are more responsive to the complex support needs of unrepresented litigants.

Practice wisdom

Court Network understands that, increasingly, court users are appearing at court with no legal representation.

There are a range of reasons why court users do not have legal representation including:

- That they are ineligible to receive legal aid representation
- That they choose to represent themselves
- That they cannot afford legal representation
- That they are confused about who and how to choose a legal representative
- That their lawyer has withdrawn from their case
- That they are dissatisfied with their lawyer and have ceased working with them.

Unrepresented parties may appear at court with complex support needs as they will often be:

- Frustrated and 'fed up' by the legal process
- Confused and overwhelmed
- Angry and dissatisfied with court proceedings and previous court outcomes
- Distrustful of the legal system
- Upset and emotional.

Some unrepresented parties will have 'burnt their bridges' with many people within the court system and feel very much on their own. They are also unlikely to seek assistance unaided. They are more likely to be part of what is sometimes called 'hard to reach' groups including people with mental health issues, people with disabilities, people from CaLD communities, Aboriginal and Torres Strait Islander people, and people with low literacy.

"My father and I attended VCAT in Melbourne today, which was our first time there, and while we were waiting a very kind gentleman volunteer from Court Network came over and had a chat to us about the

whole VCAT process. He was really helpful and put us at ease. I just wanted to say that I think this is a fantastic service and that I appreciate your volunteers.” **Feedback from unrepresented litigant**

Unrepresented people are likely to require more intensive support to access justice, that is often beyond the role and availability of court based administrative and legal staff and which is able to be provided by Court Networkers as a complement to legal and justice administration services.

Understanding the impact of family violence for unrepresented litigants

It is widely noted that Victorian courts are facing increased numbers of court users coming to court for family violence matters, many of whom who have no legal representation, are in a highly distressed state and who have serious concerns for their safety.

Family Violence Intervention Order applications finalised in the Magistrates’ Court Victoria during 2013-14 (including interim orders) totalled 65,737, an increase of 47% since 2008-09³.

The issue of family violence also has a major impact for many people, many of which are separated parents with no legal representation, accessing family law courts.

In relation to the family law system, Court Network notes the findings of the 2015 Australian Institute of Family Studies report which details the results of the evaluation of the introduction of the 2012 family law amendments.⁴ The report identifies evidence of increased emphasis on identifying family violence and child safety concerns across the family law system, particularly among lawyers and courts with more parents who used formal services reporting that they had been asked about these issues, and increases in disclosures of family violence particularly in relation to safety concerns.

The evidence on parents’ experiences of professionals’ responses to disclosures of family violence and safety concerns particularly for parents using lawyers and courts as their main pathway however suggest the reforms have had limited effects.

Court Network understands that there are also many court users appearing at court for unrelated family violence matters but for whom the issues of family violence are impacting on their lives. For example a woman may be appearing at a VCAT hearing regarding housing tenancy issues but who also is experiencing underlying issues relating to family violence, which she may not have disclosed. This may be adding to her stress and anxiety and to the risks to her safety she may experience.

As detailed in the 2015 Court Network submission to the Victorian Royal Commission into Family Violence⁵, we described the significant frontline experience that Court Networkers have - in being the ‘eyes and ears’ to the experiences of court users in the court building - in what it means to come to court for both applicants seeking protection through an intervention order and respondents who are required to attend court due to reported abusive behaviour towards a family member.

Court Network conveyed to the Commission that 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 court appearances, feeling scared and unsafe, and the pressures of other demands such as looking after children.

A number of problems with the current system as identified by Court Networkers were outlined in the submission including:

- The inconsistencies across the various courts in the processes for applying for an intervention order. This includes the lack of explicit triaging processes to identify cases

³ Magistrates Court Victoria, *Year at a glance 2013-14*.

⁴ Australian Government, Australian Institute of Family Studies, 2015, *Evaluation of the 2012 Family Violence Amendments, Experiences of separated parents study*.

⁵ Court Network Submission to the Royal Commission into Family Violence June 2015

that might proceed more quickly, or who might have complex needs and require intensive support.

- The inadequacy of court infrastructure which is making women less safe at court. This includes the underutilization of remote witness facilities for giving evidence in family violence cases, and the lack of separate waiting rooms for applicant and respondents in many courts.
- Long waiting times for intervention order matters as everyone is told to arrive at court by 9.30am regardless of when their matter will be heard. Many women do not realize that they are likely to be at court all day, and so they arrive without nappies for their little ones, without lunch and without making arrangements for the school pick up of older children.
- The formalities of the court process and length of the 12 page Information Form (the basis of intervention order applications). These present real difficulties for women who have poor literacy, or who are unclear of how the form will be used. Many women feel like they have not had an opportunity to properly communicate their story.
- The lack of appropriate responses to respondents, for many of whom their appearance at court will be the first time there has been any systems intervention in relation to their behaviour. Court Network is often the only service working at the court to approach respondents, and who are able to inform them about court processes. In the small number of courts where there are respondent support workers, Court Networkers work in a complementary way.
- Limited access to trained interpreters at both pre-court and in court. Information provided to women when police attend an incident is mainly provided in English and not always explained via an interpreter. This results in many women not attending court because they are unaware that they are required to do so. At court, where an interpreter is booked, one interpreter may be booked for several women resulting in long waiting periods. Interpreters are only booked until 1pm, so matters may be rushed through the system before the interpreter leaves or adjourned if the matter is not resolved before the interpreter leaves.
- Exiting court buildings can be the most terrifying and risky time for women appearing at court. There is potential for the respondent to be angry, agitated and to make threats to the woman. The safety of women is compromised as there is no service available to accompany women to their cars or public transport when leaving court. Whilst there are some creative solutions to this at various courts – creating a ‘window of time’ for the woman to leave whilst the court is preparing final papers for the perpetrator, or exiting via a back door – there is no systematic or adequate response to address this risk posed to women.
- Lack of integration across court jurisdictions – women may be required to appear at the Magistrates’ Court for an intervention order, the County Court if there is an appeal, the Family Court for issues relating to property and children and VCAT where there are financial and tenancy disputes. Women experiencing family violence are not treated in a holistic way across their interactions with various court jurisdictions resulting in a fragmented and inadequate system response.

As suggested in our submission, there is a need to develop and implement a comprehensive workforce development program to ensure that all professionals working with the Victorian courts and tribunals system are more informed about the various complexities and risks associated for unrepresented litigants appearing at court for family violence related matters, and for people appearing for non-family violence related matters but who may also be impacted by family violence. Such training will assist those working within the courts and tribunals system staff to recognise and respond appropriately, for example by referring court users to relevant support services.

Recommendation 4: Develop and implement a comprehensive workforce development program to ensure that all professionals working within the courts and tribunals system have a sound understanding of the underlying causes of family violence, and the various complexities and risks associated for unrepresented litigants who may be experiencing family violence and/or appearing at court for family violence related matters.

Case Study 3: Broadmeadows Magistrates' Court

By chance she was found by neighbours, huddled in the corner in a shopping mall, sobbing. She is hiding. Her elderly neighbours, having never seen her alone before, are curious and ask if she needs help.

They take her to the police station then to court. The court registrar sees that she will need help with an Intervention Order application. Court Network is called and an interpreter assigned.

She begins slowly, reluctantly. We ask if she would prefer the neighbours to leave the room. She says "*No, they must hear this*" She is quietly crying, pausing as if to gather strength for what is ahead.

She speaks softly and tells of the years of abuse against her and the children. He removes the phone when leaving the house and allows her no privacy even when visiting the doctor. The neighbours become wide eyed and are obviously distressed. They have heard enough and leave the room to wait outside.

The woman continues. The words come quickly now and the interpreter has trouble keeping up. We have enough information for the order, but now she can't stop. The children are terrified if he is in the house. The slightest 'indiscretion' and he throws them to the floor and stomps on their head or hand. She pleads with him not to hurt them, but he laughs. She tells of the rapes and repeated physical and sexual abuse. She stifles her sounds of distress when the children are in the house. They must be protected.

We have done our best to complete the paper work, but speak privately to administrative staff quickly outlining the nature of the application before she is called to the counter.

It is getting late in the day when staff open another court and she is called. It is a closed session but the Magistrate indicates for us to stay. The Interim Order is granted and her husband is to be evicted from the house. Now she is keen to return home as her children will be returning from school and her husband will realize that she is missing. She is afraid for them. The reality of what she has done is sinking in and she is petrified.

She will need help.

We call on representatives from Berry Street – a specialist family violence support service and the Salvation Army, and crowd into our small office. We are familiar with the services they offer and it has now become a team effort. We outline a plan of action including locks changed, safety house accommodation, cash and a mobile phone. The community service lawyer has left the building but we make an appointment for the following morning.

Our job is done but it is to be the beginning of a long and difficult journey for her. Though supported by other agencies, our experience tells us that she will likely return to court again and again as she struggles with pressure from her religious community and family to take her husband back. "*After all*", she says, "*he is the father of my children*".

As told by a Court Network volunteer

"We have a good relationship with court security. We work closely with them to facilitate access to the secure room facilities for those parties who may be scared and feeling at risk." **Networker**

Piloting new approaches

Along with the *Responding to the increased support needs of unrepresented litigants* project described above, Court Network actively seeks out opportunities to pilot new approaches for improving access to support services for unrepresented litigants and to bring those learnings into our core services.

For example, in August 2015, VCAT established a pilot project with Monash University Faculty of Law students called the Self Help Centre. The project was focused on providing procedural support and guidance to unrepresented litigants attending VCAT, particularly post hearing. The law students were trained and briefed on providing support to unrepresented litigants post hearing, to explain possible next steps for the litigant and helping them understand VCAT decisions. Court Network volunteers were also invited to be part of the pilot program to work alongside the law students.

Court Networkers were able to refer their clients to the Law students for further information and support regarding VCAT procedures. The law students were in turn able to refer their clients to the Court Network volunteers for emotional support, general information and to explore referral opportunities to other services. The law students also undertook some training with the Court Network volunteers to learn more about outreach, the art of approaching people whilst they are waiting in VCAT for their hearing. The law students and VCAT volunteers worked closely together for a twelve week period and the collaboration was considered a great success. Feedback from unrepresented litigants was positive and appreciative. The Self Help Centre is commencing again in March 2016 and Court Network volunteers will be involved.

A further example is our family violence project, funded through the Department of Health and Human Services which aims to provide an enhanced model of support to women and children in family violence cases appearing at the Sunshine Magistrates' Court which commenced in December 2015. The project is guided by a Reference group chaired by Regional Coordinating Magistrate Toohey and comprising representatives from community support and legal services, and Victorian Legal Aid.

Specially trained Court Networkers will provide enhanced support including:

- An initial needs assessment to identify referral options
- Risk assessment and safety planning
- Greater knowledge of local referral agencies and pathways
- Guidance to applicants completing family violence intervention order application.

The six month Project expects to provide this enhanced model of support to around 80 women and children. Court Network will evaluate the outcomes of the project and consider how the learnings of the project might be expanded into other courts.

Recommendation 5: Support and encourage new approaches to providing non-legal support to unrepresented litigants with the capacity to continue such initiatives where they can demonstrate improved outcomes and effective and efficient use of resources.

Strengthening our volunteer workforce

Court Network is committed to continuing to build the expertise and capability of our volunteer workforce to respond to the complex needs of unrepresented litigants. Recent initiatives include developing a specific 'practice guide' to support our volunteers in reaching out to, and supporting unrepresented litigants and rolling out the delivery of comprehensive family violence training to all Court Networkers. These initiatives are informed by our learnings from implementing and testing new ways of supporting unrepresented litigants.

Case Study 4: VCAT

Our support made a difference - it just helped

I approached 'Adele' simply because, waiting for her hearing. She appeared terrified, and indeed she was. Her distress was palpable. In the short time I was able to speak with her before her case was called, it emerged that she had undergone a year of overwhelming loss: her mother had been admitted to nursing care, her husband had left her, and she had been retrenched from her job and was now without income. It felt like loss upon loss, and indeed, it was. And now, the question of where she would live appeared uncertain.

"Would you like me to come in with you?" I whispered - she shot me a look and nodded. Her case centered on the question of whether her decision to break the lease on the flat she was renting, following the dissolution of her marriage, should incur a penalty. With uncertainty over whether her future there was secure, 'Adele' had decided to leave the place and look for alternative accommodation. If this decision were to incur a break-lease penalty, she would be up for some thousands of dollars. Without a current job, she would find this potentially overwhelming. She was understandably anxious. In spite of her fear and what was at stake, 'Adele' spoke admirably well on her own behalf, and the Member brought attentiveness and clarity to her consideration of the case, which was eventually found in 'Adele's' favour.

Outside the hearing room, she was both exhausted and euphoric. I knew she would need a proper debrief, and it was in our discussion following the verdict that I learnt the full details of her personal difficulties - listening and affirming as well as drawing her attention to the largely unacknowledged personal strength and resilience she had shown to get herself to this point.

She was extraordinarily appreciative that someone had just 'appeared' to help her feel that in a situation of stress, she was not alone. This encounter seemed to me to cut to the heart of what we do at Court Network. It made a difference - a difference incalculable and impossible to measure, but a difference inestimable and, in its way, beyond value. It just ... helped.

As told by a Court Network volunteer

Accessible information – relevant and respectful support

As noted above, Court Network volunteers support many unrepresented litigants who have a range of language and literacy needs. This has been highlighted for us in our work to improve access to information to court users from CaLD communities, and access to support by considering the way in which we outreach to court users. We have also been developing tailored resources for unrepresented litigants such as the Resource Booklets mentioned earlier in this submission.

Whilst these user friendly, plain language Resource Booklets have been developed specifically for the Family Law Courts we believe they have great applicability for adaption and use within the Victorian courts and tribunals system. They are an important mechanism for making the justice system easier to navigate and in providing unrepresented litigants with a clearer understanding of the process. One of our learnings in relation to the use of the Booklets is the need for timely access to information.

Court Network supports the reforms proposed by the Productivity Commission that *"courts and tribunals should further develop plain language forms and guides, assist self-represented parties to understand time-critical events and assess whether their case management practices could be modified to make self-representation easier."*⁶

⁶ Australian Government Productivity Commission, op.cit., p,37

We note in the Background Paper the suggestions around technology-based solutions and also the limitations raised in accessing technology based support for many court users. Court Network also supports these concerns.

Recommendation 6: Introduce cultural awareness training for all professionals working across the courts and tribunals system to enhance the cultural responsiveness of all professionals working with self-represented litigants from CaLD communities.

Recommendation 7: Ensure that technology based solutions are accompanied by strategies to support people who cannot access or who have limited ability to access such initiatives.

We strongly believe that in providing better support to self-represented litigants throughout the Victorian justice system, it is critical to take a holistic approach. This will require consideration of the legal representation and advice needs, alongside the emotional and social supports and information needs of unrepresented litigants.

“Often people are appearing in court alone. We offer them a smiling face, warmth and empathy. Just offering this support to someone speaks volumes.” **Networker**