



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into domestic and family violence—policy approaches and responses](#))

**Members:**

**MRS G JONES (Chair)  
MS B CODY (Deputy Chair)  
MS E LEE  
MR C STEEL**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 23 NOVEMBER 2017**

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**Secretary to the committee:  
Dr A Cullen (Ph: 620 50142)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

**WITNESSES**

**BOERSIG, DR JOHN**, Chief Executive Officer, Legal Aid ACT .....1

**YATES, MS HEIDI**, Head of Practice, General Practice, Legal Aid ACT .....1

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*Amended 20 May 2013*

**The committee met at 10.22 am.**

**BOERSIG, DR JOHN**, Chief Executive Officer, Legal Aid ACT

**YATES, MS HEIDI**, Head of Practice, General Practice, Legal Aid ACT

**THE CHAIR:** I declare open this first public hearing of the Standing Committee on Justice and Community Safety's inquiry into domestic and family violence, policy approaches and responses. On behalf of the committee, I thank Dr Boersig and Ms Yates from Legal Aid ACT for making time to appear today.

The proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. I remind witnesses of the protections and obligations entailed in parliamentary privilege and draw your attention to the pink privilege statement which is set out on the table. Can I confirm for the record that you understand the privilege implications of this statement?

**Ms Yates:** Yes.

**Dr Boersig:** Yes, we do.

**THE CHAIR:** Thank you. Before we proceed to questions, Dr Boersig, do you have any opening remarks?

**Dr Boersig:** Just very briefly, I want to reiterate how important we think this issue is, around family violence. It is a key objective of the commission in terms of the services we provide, and over the last few years we have really ramped up this issue and dealt with it in a more holistic way than we have in the past. That has been imperative; it was imperative for the commission to do that. We thank you for the opportunity to be here today and to make a submission. We take our role in providing policy advice and information very seriously, and we would like to assist in every way possible in making sure that our society is the safest possible for primary victims and balances the rights and responsibilities that everyone faces when they come before the court. We thank you for that.

The other thing I want to say briefly is that we talk a bit here about statistics. They are important, but from our point of view statistics mean people, the lives of the people that we are dealing with here. We take that issue very seriously. We know that providing the data is crucial, but we also know that we are talking about people on the ground who are facing violent and awful situations. They are the people we have our sleeves rolled up to help, and we want to do that as best as possible. I want to make that very clear from our point of view. We are very aware of the human face of all this. The people that directly work to Heidi are seeing it every day, at the court, right at this very moment, and on our helplines and so forth. Again, we thank you for your interest.

Having said that, going back to statistics, you will see that on page 6 we talk about the increase in our work. That increase, we believe, reflects an awareness of, an improvement in, the capacity for people to report. We do not think it is an indicator of increasing violence; we think it is about people being able to report. One of the major reasons that is happening is that government, committees like this and the media have publicised this as a real issue, and more women, in particular, primary victims, are

coming forward to seek assistance.

To be quite candid, I could not be happier about that. We want to get out there. In fact, that is one of our main goals as a mainstream organisation: to be accessible to people who are sitting out by themselves, that single parent or whatever at night. Who do they go to? We want to be there for those people. That is the job that Heidi's team is doing. It does reflect an increase, but I think that is why; I certainly hope that is the case and that we are not becoming a more violent society.

The stats also show that this work is becoming an increasingly important part of overall practice. That reflects the way we need to help the most vulnerable and disadvantaged people in this community as well as balancing all our needs in terms of who else comes before the court and needs assistance, representation.

Finally, later on, you will see in the submission that we talk about non-legal support. The Legal Aid Commission is doing that much better than it did five years ago.

**THE CHAIR:** As in referrals?

**Dr Boersig:** As in referrals, and also in the way that we are taking on a client now. We recognise that if someone comes to us for a criminal matter or family law matter there will be a range of other issues where they may need assistance. Our internal mechanisms for assisting are improved, but it reflects the reality of people's lives. Primary victims of violence are often experiencing housing problems and debt problems; often they are dealing with someone who is in and out of jail. So that is also coming through, and we have been lucky enough to be able to put on community workers. I have talked also about our cultural liaison unit.

**THE CHAIR:** Yes, I read about that.

**Dr Boersig:** That type of service is about how you get people comfortable and able to talk to you. We should be an accessible service, and it is linking with that non-legal support which I think is helping us do that. Heidi will probably address that later on. I was talking to one of our workers there; she has seen over 150 people since March, when she started. That is fantastic; it is about making those connections.

We need to connect within our organisation and across the legal sector, with the Women's Legal Centre, Canberra community legal centre, consumer law and the Tenants' Union. I always say that we need to make immediate hot connections. I say that because, if you have someone with you in your office and they need help right now, you need to be able to pick up that phone and ring the Women's Legal Centre or ring one of our family lawyers so that they get immediate assistance. That is a hot way of doing it or an immediate way of doing it. I find the terminology "warm" tepid, because it is much more urgent than that. That is really what I am trying to say. I think we are doing that in a much better way.

**THE CHAIR:** Thank you, Dr Boersig; that is great. I have been working through your submission from the beginning. I am not saying that things later on are not more important—I am sure we will get to questions on them—but I want to ask you a bit about the statistics that you rely on. Before that, I will comment quickly that the

15 per cent increase in the number of clients seeking assistance is actually quite similar to the increase in the calls that the AFP have started receiving. There is a 16.7 per cent increase in calls to the AFP; that is not just on this topic but it goes to show that the community is reaching out more.

**Dr Boersig:** It does.

**THE CHAIR:** I am glad to hear you talk about the fact that it does not necessarily mean that there is an increase in perpetrators or people living with this experience, but it is an indication that people are seeking help, and we all agree that that is a positive step.

In 2001 a young people and domestic violence study that I read about talked about how 23 per cent of young people were aware of domestic violence against their mothers or stepmothers, but an almost identical proportion of 22 per cent of young people were aware of domestic violence against their fathers or stepfathers by their mothers or stepmothers.

I know that in my extended family the experience has been more about men who suffer from domestic and family violence. I just wonder if, going forward, it would be worth keeping that in mind. I personally worry that the gendered nature of the way we have this discussion closes doors and that then we will have to go through another wave of opening doors for people who are less likely to report—even now—because it is almost being asserted that they could not possibly be victims.

My husband is in the Defence Force. They have some great resources for men. Because of the size of their male cohort, their numbers for violence against men are much higher, just because of the nature of that organisation. I think there is a need to get people to seek help. I know that at one point in your submission you talk about how there is lost opportunity for people who are less severe offenders, but nonetheless offenders, for whom, perhaps, change is a bit easier, but we are not giving them opportunities to participate in programs to give them a chance to change. If the conversation was a bit more positive towards their group in society, they might be more likely to take up that opportunity. I would not mind if you have any comment on that.

**Dr Boersig:** Yes. We try to pick that up. We think, as we have set out in the report, that it is important to get early access to rehabilitative services for offenders. To a large extent, families want to normalise their life. They want to feel safe; they do not really want to break up, but they do not want the violence. We have put a couple of avenues in this report, whether it is through the DPP or through other mechanisms of the court. Those kinds of programs, I hope, will come out as a recommendation from you. The issue that I think that presents to us very clearly is that there is a gender issue here. We are seeing that in the people who are coming to us as primary victims.

**THE CHAIR:** It is a gendered issue in who is coming to you, but that does not necessarily mean that it is the only way that it occurs in the community.

**Dr Boersig:** Absolutely; we concede that. It is a much more complex environment, and we often talk in that sense about the primary victims and the need to recognise

that.

The other aspect of that fact, if I can just return to the statistics again, is that when we are counting those statistics—and it was interesting that we correlate with the AFP—we are talking about a value of one always in these statistics. What we are counting in our stats is the primary matter by which the person contacts us. If you look at, for example, our helpline statistics, you will see that about 30 per cent of our work—very close to 30: 25 or 30—is family law related, and you will see that it is separated into a number of categories as the primary matter. I can guarantee that amongst all of those issues, family violence was a part of the discussion. We just do not record it.

**THE CHAIR:** Right.

**Dr Boersig:** It is, in that sense, being under-recorded.

**THE CHAIR:** So there are more cases.

**Dr Boersig:** So when you look at our 23 per cent, you will see that in fact there are a lot more people out there who have this as an issue in their life, on whatever side. One of the family advocacy services, the family violence advocacy service at the Federal Circuit Court and the Family Court, provides assistance to either party on the basis that it actually is better if both parties are represented.

**THE CHAIR:** Yes. You get a better outcome

**Dr Boersig:** You get a better result by and large.

**THE CHAIR:** Yes, that is right. And possibly the ability for more people to live with the result better afterwards.

**Dr Boersig:** We encourage family dispute resolution in that context to try to resolve it.

**THE CHAIR:** Excellent. I want to go to page 7 of your submission, where you talk about the block listing of hearings to facilitate earlier resolution. I think everyone in this place agrees that, within reason, we have to make things as smooth as possible and as quick as possible for people. What do you see as the nature of the current delay? How long are the people you are helping waiting for resolution of their issues in that context?

**Dr Boersig:** The block listing is an endeavour by the Magistrates Court to pick up the approach that was taken by the Supreme Court, and the Supreme Court coupled that shift with a central listing approach. Previously—for the last, say, four or five years prior to the current Chief Justice—they had a docket system, and each judge made their own list. When the current Chief Justice came in, she changed that. She brought it back to central listing. She brought it in to control it and then allocated work. Then she moved on to say, “Okay. At certain periods of time, we are going to put in a larger number of matters, we are going to have a few acting judges and we are going to get through the work.” That is how it started. Two years ago the Magistrates Court delays were pushing out up to 18 months on contested matters.

**THE CHAIR:** Yes, very long.

**Dr Boersig:** The Chief Magistrate determined that she would also try block listing. The catch with that is that most currently, as you will have seen, there are two block listing periods at the same time, in November. That has led to a difficulty in resources for the DPP and Legal Aid to meet that at the same time.

**THE CHAIR:** So there is a balancing act?

**Dr Boersig:** There has been a balance. But the intent of block listing is to bring those in and get them heard in a quicker manner. That should be bringing matters forward; that is certainly its intent. In terms of what is happening with our clients on the ground, we are getting through pretty quickly on our listings, as I understand it, and Ms Yates will tell me if I am wrong. The approach taken is a bit different there: because of the volume of work and the listing practices, they are getting up for interim orders quite quickly.

**THE CHAIR:** What is “quite quickly”?

**Ms Yates:** In the civil jurisdiction there is a protection orders list every day. That is not so much—

**THE CHAIR:** As in people have their matters sorted out within weeks, or at the time?

**Ms Yates:** The three-stage process in family violence order matters is such that you can apply for an urgent interim order on the day of your application. There is no problem getting into those hearings on the day. You then return to court to see if the matter can be resolved approximately four to six weeks later. If not, a hearing is set. Ten years ago, those hearings were usually set four to six weeks after the return conference. We are now looking, in some instances, at closer to 12 weeks, so even longer afterwards, because of court resourcing.

**THE CHAIR:** Yes, the volume.

**Ms Yates:** For some families, that time is useful because it gives people time for things to settle, time to work out alternative arrangements. Others absolutely seek a more rapid response and resolution of the matters.

**THE CHAIR:** There is just one final question from me. We all know there is a bit of a wave at the moment because of public conversations; it is happening not only to Legal Aid but to the DPP, the police and in fact the prison. Even though it has not really been studied much yet, do you get the impression that this may subside, or is this a new norm? Do you have any comments on that?

**Dr Boersig:** From my point of view, I think this issue around family violence will be maintained. You are right about the way that it goes in cycles. We have seen this in the past.

**THE CHAIR:** A peak in issues because we are talking about it.

**Dr Boersig:** A peak of issues. And that is partly why we are seeing a lot more discussion now about elder abuse.

**THE CHAIR:** Yes, because it is similar.

**Dr Boersig:** It is similar and it is developing. Given the number of people who we are now seeing maintained, coming through for assistance, I do not see this going away for a long time. I would love to see the numbers disappear, because generally we can provide better solutions, but I do not see it.

**THE CHAIR:** That was basically the same with the DPP.

**Ms Yates:** I would share that view. I think community understandings are changing, and they are changing across all age profiles in relation to being able to identify what is okay and what is not okay, what healthy relationships look like and what they do not. I would expect that would lead to a continued demand of the nature that we are currently seeing, if not an increased demand, because people are able to identify that what is happening is not okay. Whether that is a young man recognising that he wants to change his behaviour and seeking help, or whether it is someone coming to us having been subjected to violence and needing immediate safety, it is a really positive movement. I think about public safety campaigns around things like seatbelts and drink-driving where there has been significant cultural change, and I feel as though we are—

**THE CHAIR:** Going through that.

**Ms Yates:** Indeed, in relation to family violence.

**THE CHAIR:** I agree, and I think that in and of itself everyone agrees that there is some benefit in that. Being able to identify that what is happening to you is not acceptable or is not legal is a big change.

**Ms Yates:** And no matter your gender, as you have picked out, Mrs Jones.

**THE CHAIR:** Yes, that is right. If you have been controlled by anybody, or belittled or brought down, you have certain rights.

**MS CODY:** I have a slightly different area that I would like to talk about. I know that Legal Aid do some wonderful work, and thank you to both of you for giving me a tour and showing me the types of work you do. It has been invaluable for me to be able to help many members of the community. It was really wonderful. Thank you. I think we briefly touched on this when I met with you both a little while back. Obviously there are people in the community that are not able to access Legal Aid, for various reasons, and that is okay. But do you have a list, or are there legal firms, for want of a better word, that you can help people to get in touch with? Do you do that sort of work?

**Dr Boersig:** We do. It was an issue we picked up at the recent Assembly hearings. I have contacted the Law Society—Dianne O’Hara, who is the CEO—to have a discussion about this. We have panels of lawyers who are prepared to do Legal Aid

work.

**MS CODY:** Okay.

**Dr Boersig:** And we have contact with lawyers who are prepared to do pro bono services. The Law Society also has a pro bono committee, which I am on, in which their lawyers connect with that, and also members of the bar. We can access those people. It is not a public list, though. We took the point, though, that was raised at the Assembly: “Are there other people around who are prepared to do this work?” There is a lot of hidden pro bono work done by the legal profession here. In many ways, it is a story that would benefit from being told more often. There is not a lot of pro bono work being done around family law that I can identify, but there is pro bono work done in other areas. So, in one sense, when I have that conversation with Dianne O’Hara I will be in a better position to better answer that question.

We are very careful about to whom we refer work. Sometimes the corollary of low pay does not bring forward the best people for the job. We have taken particular note of this around care proceedings, for example, but also we took note of this when we changed the way we did family violence work.

Up till a few years ago, we had a unit—we have had a unit there for 25 years—that referred quite a lot of their work because they had issues around conflict. We set up an information barrier between our domestic violence work and our family and our criminal divisions. That has allowed us to have a much more vibrant service where we are not referring work at Legal Aid rates to a range of lawyers who are taking it. We think that is providing a much better service than was being provided in the past, when, for X number of dollars, which was about \$120 an hour, matters were referred out. We are very careful about to whom we give that work. We also speak regularly to Rob Reis, who convenes the complaints and ethics area of the Law Society, to make sure that we are all on the same page about calibre, capability and trust.

**Ms Yates:** The other thing I would say in relation to that, Ms Cody, is that you are right that there are people who are not eligible for an ongoing grant of legal representation. What I have seen in terms of Legal Aid’s framework is that we have drastically increased the number of duty services that are available to all Canberrans, no matter what they earn or how many cars they have. That allows people to really get their foot in the door to get good, solid advice in the first instance, when they are thinking of separating or thinking about what their options are. Our duty services allow people who are self-represented, generally as a result not of choice but of ineligibility for aid or inability to pay a private lawyer, to come back to us on more than one occasion for advice as their matter progresses.

For example, in family law matters, our duty service runs from 10 to three each day at the court. We often see people initially to assist them to apply for advice in relation to preparing a response to other material, advice on how to issue subpoenas, advice on preparing to give evidence. We are there in that gap, which we absolutely acknowledge exists, to make sure that people do not get the letter saying, “You are not eligible for a grant of Legal Aid. Off you go and good luck.” We assist people on that duty basis.

What we also do is—when we see someone and it is clear that they will not be eligible for Legal Aid or are highly unlikely to be—talk about the really practical things. “If you are opening the *Yellow Pages* and going to call a lawyer, these are the questions you should be asking. How much are they going to charge? Is it all going into trust straight up? Are there things in your matter you can do yourself, such as your own photocopying, your own drafting of material?” We talk about those practical measures which allow people to not have to spend thousands of dollars on things they could do for themselves.

**MS CODY:** Tens of thousands, often.

**Ms Yates:** Tens of thousands, yes; I agree. None of that is the panacea, but we are looking for creative ways where, with our limited resources, we can assist people in that gap wherever possible.

**THE CHAIR:** I think you will recall that in the annual reports hearing I asked about lower cost private providers. I am sure you are coming back to us with some thoughts on that, but again I just wanted to raise the fact that I know that in the ACT there are a range of different cost service providers in the legal profession, and with those who are working on a semi-charitable or a low cost model for people in need it would be great for them to form some kind of publicly known alliance or common identifier.

**Dr Boersig:** Yes. That is what I was referring to, and I have sent an email to Dianne O’Hara, saying, “This got raised.” I sent the section of the transcript of our discussion and said, “Can we have a talk about this?”

**THE CHAIR:** Some people want to pay higher fees to be 100 per cent sure of their best outcome. They might think that is what they are getting, and maybe they are. Who knows? But with others it might just be that in-between situation: people who are just outside your catchment but do not have the capacity to afford the full-on cost of a battle.

**MS CODY:** I can talk about my own personal circumstances. I was extremely lucky in some respects. My grandparents passed away and left my parents with a substantial sum of money, so they were able to pay the \$30,000 up-front fee that the lawyer that was recommended charged me. For that money I got one court hearing where it really did not go very well at all—awful, to be exact. I ended up finding another lawyer. That whole \$30,000 went to that one court appearance, and I ended up finding another lawyer, who was amazing and fabulous and spent 18 months of his life with me. I cannot speak too highly of him; he is amazing.

**THE CHAIR:** Having said that, could the system be improved or could there be more transparency for those who are purchasing private services? I think also that out of this process we might find that there is a need for more public sharing of information about people’s experiences with different legal professions so that when you go to Dr Google you can find more there as well.

**Dr Boersig:** It is like TripAdvisor.

**THE CHAIR:** Why not? We have the best places to stay, hotels. Maybe we need the

best places to go to get your life back legally.

**MS CODY:** I do want to agree with what you were saying, Ms Yates, about the work that you are doing to try to catch the people that are just on the fringes. It is very good, and I commend you both for your work in that area. I know Mrs Jones raised the fact that these days men are, hopefully, feeling more comfortable and confident about being able to raise the issue of being victimised—

**Dr Boersig:** Yes.

**MS CODY:** I know that in your report you have mentioned that there are men, and I think you said one in 19 men. I do agree that overwhelmingly it is women that are victimised, but are you seeing men come through Legal Aid to ask for assistance?

**Ms Yates:** Yes, we are. Both in our domestic violence unit at the Magistrates Court and at our duty service, particularly at the Family Court, we are seeing men, some of whom are primary caregivers and some of whom are not. Some are in short-term de facto relationships. Some have experienced violence at the hands of their partners for many years.

We have a mixed-gendered approach to staffing of those units, for a good reason: some men might feel more comfortable talking to a bloke; some might not. It is the same for women. We are seeing men, and we are assisting them to make their case. Often part of the initial conversation I am more likely to have with a man is about saying that the law recognises this conduct as violence regardless of the gender of the perpetrator.

**THE CHAIR:** That is right.

**Ms Yates:** We know that people of all genders use violence and people of all genders are subjected to violence. Our service is here to help. That is the way we run our service, and we are seeing men feeling safe enough to come and seek help.

**THE CHAIR:** That is good.

**MS CODY:** That is really good. I have a hundred questions, but I would like to let other committee members have a chance.

**MS LEE:** I know that there are lots of different ways that we use terminology in this area, but sticking consistently with what you have used in your report, one of the things that you have mentioned is that meeting the needs of primary victims of family violence is a core priority for the commission. But a lot of the legal work and the grants that you provide are for the perpetrators, using the same words. Keeping in mind the complex nature of family violence—that it is not just one party against another—how does Legal Aid deal with potential or foreseeable conflicts of interest in that regard: making sure that you are meeting the core needs of the primary victim but at the same time making sure that the perpetrators or the accused have access to justice and have procedural fairness?

**Dr Boersig:** We have the information barrier I indicated, in particular, and that has

allowed us to assist many more people than we otherwise were assisting. We were conflicted, basically. For example, a woman would come to us and say, “I have a domestic violence situation,” and we would find that we had acted for the fellow five years before. The information barrier is allowing us to assist many more primary victims, most of them women, in those circumstances. On the other side of the information barrier, most of those grants are linked to a criminal prosecution. There might be an apprehended violence order or a family violence order being taken out quite separately, which is done often through our unit, but the person being charged, or the alleged perpetrator, has been picked up by our criminal practice and defended in the usual way we do it.

The lines that do not get crossed are that we do not have a Legal Aid lawyer for each party in the same court. Mind you; it happens in the United States. They recognise the role that some practices have to play around Legal Aid, but we do not do that. That is where we draw our line.

Otherwise, we utilise the normal conflict of interest provisions. An information barrier, of course, is one which is both electronic and physical. That, as the courts have reviewed, is a question of circumstances in each instance where you are looking at whether or not there was a conflict. Those issues come up for us in particular around family law, so we are particularly careful there. The thresholds around conflict are lower in family law proceedings than they are in relation to, say, criminal proceedings in the court across here.

**Ms Yates:** The information barrier also allows us to use government funds far more efficiently. It is more expensive for us to pay a private lawyer to do work than to do it in house. The barrier means that we are able to, on my side of the practice, see many more people without impacting the funds that are available for representation for those who are accused. So that is useful.

**MS LEE:** Keeping on with core priorities, one of the other ones that you mentioned in your report was elder abuse.

**Dr Boersig:** Yes.

**MS LEE:** Was that decision taken strategically because of our growing older population or because we have an increase of incidents of elder abuse? Or is it a combination?

**Dr Boersig:** A combination. In relation to what we were seeing developing around guardianship and financial management, in which we are doing an increasing amount of work, what we were starting to hear on the helpline was all pointing to the fact that there was a bigger need than we realised. Of course, nationally this is the case; it is a Council of Attorney-Generals priority. It is a priority nationally. Legal Aid is making it a priority. It has been back in now for the last few years.

But you are right: it is generational. It is happening because a new generation is coming through—or old generation, baby boomers—and their parents are living a lot longer than they otherwise were. So those issues are coming up quite regularly. It has always been there. Financial management applications—financial guardians, in

effect—have been an issue for ACAT ever since its inception and were before that, through Supreme Court proceedings. It is just much more accessible now that they have ACAT. So we have seen both.

**MR STEEL:** Do you know how many older people are contacting you regarding elder abuse issues?

**Dr Boersig:** I would have to take the actual number on notice, but not enough, and that is partly because of issues of isolation and vulnerability. One of the things we are doing at the moment is forming a partnership with Libraries ACT. They have, for example, 400 elderly people who are housebound.

**THE CHAIR:** That they deliver books to.

**Dr Boersig:** Through their mobile library. We are going to couple with that and get more material out through that, and also run a whole lot of community legal education around this in libraries and so forth. Its nascence is coming. We are talking—

**THE CHAIR:** Seniors clubs, aged care assessors for the federal government and all sorts of people could be useful.

**Dr Boersig:** Yes.

**Ms Yates:** Indeed, and building on John's comment of "not enough", it is exactly what we are doing. So recognising—

**THE CHAIR:** Because those people are actually out there contacting all those people on a regular basis.

**Dr Boersig:** Yes.

**Ms Yates:** Yes.

**THE CHAIR:** Health professionals and so on.

**Ms Yates:** That is right. We are doing regular outreach to Council on the Ageing in Pearce, and we have also lobbied for some private funds to pilot a regular outreach to the hospital. That is involving us being out there to see older people who are on the wards, maybe only for a couple of weeks. It is a window of time when social workers become aware that there are issues and they are more willing to talk to us. That has involved conversations with the ACAT assessors, the social workers and people who are out in the community providing healthcare services. We are definitely accessing older people. I think that part of the growing community awareness is that the front-line workers in health and social services are seeing it and thinking, "Hang on; this constitutes family violence." Or they say, "This is not okay and there is help available."

**THE CHAIR:** Is there advice, documents or good websites for families when they have an ageing parent or grandparent that they are thinking about how to help, so that when they set up their assistance to them it is appropriate? I think every culture has a

different way of assisting older people. Some of it would seem very odd to mainstream Australians. My grandmother lived with us till she was two years off dying; that is not very common. Then it is about how to maintain that person's independence of decision-making. I remember my parents being given advice by her brother to let her go walking even if it was dangerous, because she was an individual and it was up to her. When you want to protect somebody who is becoming vulnerable in their older years, do you know if there is any guidance that is available to families? As MPs, we also have the opportunity to talk to lots of people.

**Ms Yates:** Indeed. Legal Aid has been successful this year in obtaining a number of ACT government grants to produce the very types of resources that you are talking about. In the first instance we are working on a guide to capacity: clear information about the fact that all of us are presumed to have the capacity to make decisions about our own lives, including older people. We know that often the actions of family and friends might be based on the need or desire to protect them, or good intentions, but in fact that can lead to the older person losing the ability to make decisions about their life, including the choice to take risks.

**THE CHAIR:** That is right.

**Ms Yates:** The resources that we are developing are partly about that capacity and that recognition. They are also for families, friends and support workers working with older people. They are about identifying situations where the person should retain the right to make decisions but also saying what to do if you feel as though something is not quite right. There might be a family member who is stopping Gloria from going to church or she might be no longer going along to the canteen where she used to meet with her friends.

We see those written resources as useful for some people in our community, but most recently we have also been getting out in the community to do education sessions with individuals, with their support workers, with health workers. That is about saying, "This is what the law says. We all retain capacity. If you have concerns about someone's capacity, this is what you might do. These are the supports that are available if you think someone might be experiencing this."

**THE CHAIR:** When are those products likely to be available, to your knowledge?

**Ms Yates:** To my knowledge, they should be available in the first quarter of next year to the middle of next year.

**MS LEE:** Are those resources available in any different languages at all?

**Dr Boersig:** They will be.

**Ms Yates:** That is our intention, yes. The funding is not as generous as it might be.

**MS LEE:** I notice that you have said there are limits to your resources and funding.

**THE CHAIR:** There might also be ways of getting people to volunteer in that space.

**MS LEE:** I know that you have your cultural liaison officers, who do amazing work, but it is very difficult for them to do home visits to 400 housebound elderly people.

**THE CHAIR:** And if the information arrives in their mother tongue, they are more likely to take it seriously and understand what their rights are.

**Dr Boersig:** Yes.

**MS CODY:** Have you been working with the Department of Health aged-care area? I know that they have monstrous amounts of resources, very similar to the ones you have just described. I know because I used to work there and I actually wrote a lot of them. If you have not had a chance to yet, it would be worthwhile talking to them about the resources they already have.

**Ms Yates:** That is a very wise point. We are not into reinventing the wheel. Some of their stuff is really straightforward and has been codified in plain language, which is most useful, particularly in terms of translating material.

**MR STEEL:** I have a quick question about whether you class elder abuse as part of family violence if family members are involved.

**Dr Boersig:** I think the definition clearly encompasses that.

**THE CHAIR:** What goes on behind closed doors.

**Dr Boersig:** It is the definition in the Family Violence Act.

**MR STEEL:** My substantive question is in relation to the funding that was provided to you which funds three solicitors in your domestic violence unit.

**Dr Boersig:** Yes.

**MR STEEL:** What has that meant in terms of resourcing? You had a 20 per cent increase in the number of people assisted in the 2015-16 financial year. What does it mean, is it adequate and do you think it will remain adequate over the forward years?

**Ms Yates:** Shall I speak to what is happening and you speak to the adequacy?

**Dr Boersig:** Yes.

**Ms Yates:** It has made a significant difference to the way we can assist people on the ground at the Magistrates Court on a day-to-day basis. Previously we might have had one solicitor, sometimes two, in that unit, and we were closing the unit around lunchtime, at the end of the daily interim protection order list. We now have three lawyers there every morning. The unit is now open all day, on both a drop-in and an appointments basis. That means that we are able to see more clients quickly. You might be aware that the cut-off for interim applications each morning is 11.30. Sometimes we were struggling to see between 12 and 16 clients between 9 o'clock and 11.31.

**MR STEEL:** You mean based in the court? Drop-ins at the court?

**Ms Yates:** Yes, physically dropping in at the court. So when people come to us, we can see them more quickly. For those clients particularly who require interpreters or for whom perhaps this is their first contact in talking to anyone about the violence, we are able to spend more time with them. And we are making sure that we get the applications right. It is not just a hurried: “You need protection.” It is: “What kind of order is going to work for you and keep you safest?” And it is about making sure that that is reflected in the application.

**Dr Boersig:** One of the positive things that will come out of the new courthouse will be that we will be collocated with the Domestic Violence Crisis Service and working hand in glove with them. Again, it is this whole issue about providing holistic services, and it recognises that a legal need has a social need—often accommodation, for example.

**THE CHAIR:** I wonder if it is possible for the committee members who have not seen physically where you are doing your work to come and have a view.

**Ms Yates:** Absolutely.

**Dr Boersig:** Yes. We have just been moved upstairs.

**THE CHAIR:** When you are ready. Next year will be okay. We will still be doing this.

**MR STEEL:** Are those extra solicitors just doing orders or are they doing a broader scope of work?

**Ms Yates:** Having the extra solicitors in the unit has allowed us to spend more time looking at the broader legal and non-legal needs of people coming to us and providing advice early on about related matters, particularly family law.

When I worked in the unit 12 years ago, you would deal with a protection order matter and then you would say, “You also have family law needs. Here is the application for legal aid,” or “I will make you an appointment in two weeks time with a family lawyer.” We have prioritised the skilling up of the lawyers in the unit so that they have family law knowledge. One example is that if you are applying for an order against your ex-partner but you have shared care of children, often the respondent receives that order from police that night and is, understandably, often very angry or concerned that it might impact their ability to have contact with the children.

What we are doing now, at the same time, the day we apply for the order, is writing to the other party and saying, “This is not about the fact that you are not a great parent. It is about the fact that this conduct is not okay and I feel unsafe. What we are proposing by way of the children maintaining a relationship with both of us is A, B and C.” We are getting in early to try to resolve and simplify the issues rather than just dealing with a protection matter over here and the family law matter, say, over here. It is a far more integrated and efficient way of approaching the issue for the client, which is, of course, one set of facts, one story, regardless of the fact that the law divides them up

into many different categories.

The other thing that the domestic violence unit does now, because of the additional resources, is link far better with our new family advocacy and support service. That is a federally funded service that operates at the Family Court and at our office, and that is funded to provide social support as well as legal support. So we have a full-time social worker who is working with both people using violence or allegedly using violence and people experiencing violence to link their matters together across jurisdictions, being with them at their family violence order application, at their child protection hearing and at their family law matter, but also providing those wraparound supports like accommodation referrals or counselling referrals that allow people to more readily engage with their legal matter because they have a clear head or they know their kids have somewhere safe to be tonight.

Having more solicitors in the domestic violence unit at the Magistrates Court is meaning that we can better link clients more quickly to broader services within Legal Aid, including our family advocacy and support service.

**MR STEEL:** At this stage, do you think that the number of solicitors that is being provided through the budget funding is adequate?

**Dr Boersig:** I think the question is: how does government address the justice gap? The question that you ask has been asked many times in various contexts, whether at the commonwealth level or here: how much legal aid is enough? It is partly where you set the eligibility criteria.

**MR STEEL:** That was my next question.

**Dr Boersig:** We would like to help more people in this situation, particularly people who might be asset rich but are cash poor. In family proceedings, often there is a lien taken out and the assets often can be dissipated. One party might not be the income earner. I would like to see a better opportunity for us to assist more of those people, particularly at the start, to get that protection, and then work out the later issue around their family law dispute.

**MR STEEL:** That was my question, around whether your income eligibility requirements apply to the domestic violence unit, particularly with those sorts of interim orders.

**Ms Yates:** We provide our initial assistance to anyone, regardless of means or merit, when they approach us about a safety issue. We are able to assist anyone on a duty basis with an initial application for a family violence or personal protection order, or advice in relation to responding to one if it has been served upon them. We do not means-test at that point.

We do means-test at the point of having a lawyer with you at the return conference, which is that second stage, and also at the hearing. What I would say about that is that because of the additional lawyers in the unit we are able to provide more people who are not eligible for a grant of aid with duty assistance at the return conference stage, and we are doing that on a day-to-day basis. The funding has also allowed us to

exercise greater discretion about who gets a lawyer at the hearing stage by having some discretion in relation to the means test.

Part of our lobbying or advocacy that led to these funds was highlighting the fact that clients were coming to us saying, in one case, “I have paid a private lawyer \$80,000 and I have not got my final family violence order yet.” More commonly, people were saying, “I paid \$10,000 to \$14,000 to get my family violence order.” We could assist people in house with those services at a far lower cost.

Our particular concern was that women were coming and saying, “I have been planning to leave this violent relationship for a long time. I have been putting \$100 aside from my pay over all this time. I had 14 grand. I went to a lawyer the day before I was planning to leave; they took that entire amount into trust and I had nothing to set myself up with for a new bond et cetera.” It should never be that a person’s safety costs them all of their financial resources that need to be directed to immediate safety concerns of other sorts. That is why, I think, government saw the need for this funding. It has resulted in an increased number of people being represented through to the final hearing stage—not everyone, but an increased proportion.

**MS CODY:** You were talking about orders. I was lucky enough, not so long ago, working with a training organisation, to help develop training materials for them to deliver about family violence matters: recognising the behaviour in colleagues, recognising the behaviour in themselves, whatever it might be. At the initial get-together a woman was talking about different types of orders you can get for varying reasons, all relating to violent behaviour. For instance, her orders were that her ex-partner could not come near her when they had been drinking. That was the only time; the rest of the time he could come and go as much as he liked, but when he had alcohol, he was not to come near. Is that common? Is it common—not that particular case—to have different orders to suit different circumstances?

**Ms Yates:** Indeed. The new Family Violence Act provides quite broad discretion for the court to make orders that it sees as necessary in order to protect the safety of the applicant and/or their children. There are a broad range of orders that we see. That said, there are a series of common ones that are on the form that tend to get ticked and made as a matter of routine: not within 100 metres, not at the house, not at the place of employment et cetera.

Part of having some additional time with people in the application phase is that we can explore with people what it is for them that will make them safe. Is it just about the drinking, or is it about the fact that you want to be able to go to the mosque or go somewhere else at a time when he might also be there or she might also be there? If you have more time, you can start drilling down into what type of order is going to keep you the safest. When you have eight minutes with someone to fill out the five forms you are less likely to get to that level of detail. So yes, the discretion is there.

**THE CHAIR:** Can those forms be supplied to us to have a look at? Is that possible, on notice?

**Ms Yates:** Certainly. Yes, we can do that.

**THE CHAIR:** Thank you.

**Ms Yates:** The new forms are far more user-friendly than the old, but they are still more than 10 pages long and with multiple varieties. If English is not your first language or if you have poor literacy skills, and even if you have higher education—they are not necessarily brief.

**THE CHAIR:** I guess it takes a bit of wisdom to get people through them.

**Ms Yates:** They are not our forms; they are the court forms. So different orders can be made.

**MS LEE:** I am hoping this is a quick one. In your report you were talking about the challenges that sometimes arise from the DPP's "pro-prosecution attitude", especially in a situation where the complainant decides that they want to drop the charges, and you were saying that that could lead to some problems in that regard in successful prosecutions. How do you see Legal Aid's role in overcoming some of the challenges created by that?

**Dr Boersig:** We have tried to address that in a number of ways. Some of it is by improving the relationship between us and the DPP. As I have probably said before, we swap staff, and that is working very well. At an officer level we try to improve the referral and the discussions that might happen. But we felt that this area still needs much development, which is why we dared to put it in the submission.

**MS LEE:** I do not mean to ruffle your feathers with the DPP.

**Dr Boersig:** No; it is an issue. We think that the DPP could assist us more in assisting people who come before them. I am not being at all critical of the DPP on this point; we see them as colleagues in the justice system in that sense. We have different jobs to do but are colleagues nonetheless. There are important policy reasons why they are obliged to do what they do. We just think that the context in which family violence happens is dynamic and complex and that in circumstances where some people may feel they have the immediate assistance and they do not want to proceed, a more robust discussion around that would assist and we could help in that discussion. We are trying to talk with them about that issue.

**Ms Yates:** I think we particularly raise in our submission that issue of support for unfavourable witnesses, if you like, in family violence matters. Whether it be that it is not appropriate for Legal Aid, who is representing the person who is being charged, to be providing support and it should be the Victims of Crime Commissioner or the Women's Legal Centre, we are interested in how we can make sure that those people—they are primarily women—get the advice they need about decisions they might be making on the evidence they choose to give on the stand, and the fact that the decision is not theirs.

If you have had a breakdown in the relationship with the prosecutor, you are also not getting the practical advice that you need to appear at this day and this time, it is likely to take this long, and these are the kinds of things that are going to happen—all

of that, which can put your mind at greater ease about the giving of evidence in a situation where it may not be your preference to do so. That said, as a commission we absolutely recognise the appropriateness of criminalising this behaviour and removing from victims the responsibility for charging perpetrators in this context.

**MS LEE:** It goes to that broad theme that you were talking about in the report about early intervention as well, doesn't it, in terms of the different options? It is so that there are a lot of them available.

**THE CHAIR:** And the criminal outcome is not necessarily the one that every victim is after.

**Ms Yates:** Indeed, yes.

**THE CHAIR:** Or every person with an experience of it.

**Ms Yates:** A vast number of our clients come to us for support on family violence but never choose to engage police.

**MS CODY:** I have one last comment or question. Yesterday I was unfortunately unable to attend the session you had linking DV and—

**Dr Boersig:** Yes, DV.

**MS CODY:** Yes, the session that you ran.

**Dr Boersig:** It was well attended.

**MS CODY:** One of my staff members attended on my behalf, and she could not stop raving about it this morning. I just want to thank you for doing that. Are you going to run a few more of those types of information/training sessions? It was quite invaluable for my staff member.

**THE CHAIR:** Could you just outline for Hansard what that training session was about.

**Ms Yates:** It was training Domestic Violence Crisis Service experts in front-line service provision. They provide excellent introductory training in the basic concepts around the use of violence in relationships and the services that they provide to people who are experiencing violence and also people who are using violence, young people who are observing that in their families and young people who are using violence.

It is a great outline. What is happening in our community? What does the law say about this? What are some of the approaches and services available to support families in this context? If you are someone working in a range of roles, from someone in a member's office through to a health provider or otherwise, what might you be on the lookout for in terms of red flags around the presence of violence or a family affected by violence, and what do you do in that context? Who do you refer them to? How do you have a safe, non-threatening conversation about what you are seeing?

It is really practical. We had an overwhelming response to yesterday's session. I think over 100 people RSVPed. We do frequent training, through our law for non-lawyers annual training programs, on family violence. I guess the overwhelming response to yesterday's session will only encourage us to continue that and make sure that—

**THE CHAIR:** I am sure there are a lot of questions in the community about what constitutes this.

**Ms Yates:** That is right. Personally, I have delivered training to over 500 people in the last eight months about the new family violence laws and framework. There is clearly strong interest there. As we monitor the implementation of the new regime, we will be interested to talk to people about what they are seeing and what we are seeing and to continue that conversation as well.

**THE CHAIR:** Could you, on notice, give us a list of some of the things that have occurred in that space, and things that perhaps will be upcoming over the next six or 12 months, if you have any of those things organised?

**Dr Boersig:** Yes; we do.

**THE CHAIR:** Even if it is just matters that you know are going to happen. Again, we are novices trying to become experts in this area.

**Dr Boersig:** Yes.

**Ms Yates:** If it is helpful at all to the committee, we would also be happy to come and speak to you directly or deliver an abridged version of the session.

**THE CHAIR:** That would be really great, thank you. We would really appreciate that. I wonder if we can book that in for early next year.

**Ms Yates:** Yes; let us do that.

**THE CHAIR:** Thank you. By early, I mean February.

**MS CODY:** In the first quarter of next year, maybe.

**THE CHAIR:** I have one more question. On page 10 of your submission it talks about training for the judiciary—I guess this is what we were coming to—and for front-line court staff and the legal profession. I just wondered what the ALRC report is and what it recommends is involved in that training.

**Ms Yates:** The ALRC report, as per the footnote, is the joint inquiry that was undertaken by the Australian Law Reform Commission and the New South Wales Law Reform Commission in 2010. It was a very useful analysis of justice responses to family violence across Australia. For the first time, we saw a detailed analysis of the comparative ways that different states and territories respond to family violence, and it also highlighted the federal arena, particularly around family law and some criminal justice responses.

As part of that report they explored prevention, early intervention, the availability of different types of legal and non-legal services, and also the experience of people who are engaging with the criminal and civil justice systems around family violence. The recommendation is quite long, and I would not seek to provide a comprehensive overview of it here, but it was talking about—

**THE CHAIR:** I just wondered what was in that kind of training. If that kind of training were to be produced here for members of the judiciary or front-line court staff and so on, what elements would you see as being important in that training? I guess it is similar to what we were talking about before.

**Ms Yates:** It is my understanding that the court has sent all of its magistrates and decision-makers to training in the last 12 months, though not necessarily all of the front-line court staff. It comes back to those basic things about what family violence looks like, what the dynamics are and challenging some of the myths. If you are seeing the same person come back three times in a year to apply for an order, it is probably not just because she is changing her mind on a whim; it is because the dynamics of violence are such that we see cycles of abuse and it may be safer for someone to return to a violent partner than to choose to stay away.

**THE CHAIR:** Yes, that is right.

**Ms Yates:** So it is some of those basic dynamics. Also, it is knowing the supports that are available for clients who might present at the court counter or present in another matter where family violence is flagged, to say, “Call DVCS. Call Legal Aid. There are options.”

**THE CHAIR:** In dealing with people who have started to grapple with the fact that they may be or they are suffering in this area and want to have a different kind of life, I often talked in mental health, when I had that portfolio, about how, when there is a fire, we are taught to stop, drop and roll, and every child is taught that at a young age. I know that is very simple stuff, because a fire is just a thing you put out, but I wonder if we are going to get to the point one day of having some very clear guidance for people about the conversations to have.

I know, for example, that with someone who is considering suicide, the advice only came out about 10 years ago that you actually have to ask the person, “Are you considering suicide? Are you considering harming yourself?” It is a question that gives a very open opportunity for information. Are we going to get to a place where we have the right words to open up the best possible conversations about this, to help people, whether they are people who have experienced, are living with or are, by their history, choosing to use that behaviour, or just where there is no reason, whatever the person’s circumstances are?

**Dr Boersig:** We are training our staff around that, in terms of the best way to elicit information from someone, to be open and to be aware of cultural issues, for example.

**THE CHAIR:** Our culture does not ask very many open-ended questions. We draw a lot of conclusions and then project them onto each other. I just wonder how, in the

public debate even, we can attack that. It is a big philosophical question, in a way.

**Ms Yates:** We do know that asking, “Are you a victim of family violence?” does not work.

**THE CHAIR:** No. That is what I am saying. It is about saying, “Would you prefer that the behaviours were different?” That might be something that is more open-ended. As I say, people often just need suggestions. They have the concern; they just do not have the words.

**Dr Boersig:** Yes.

**Ms Yates:** Questions around safety, we find, are more likely to elicit responses about how people are feeling than questions about violence are.

**THE CHAIR:** I think also, though, when you are being manipulated and controlled, you may think you are safe, because you might be physically safe, but is this how you want to live your life?

**Ms Yates:** Indeed.

**THE CHAIR:** “Do you imagine it could be different? Did you hope it would be different?”

**MS CODY:** I am only going to speak from a woman’s perspective here—I am assuming the same could be said from a male’s perspective—but I think that a lot of women often do not realise they are being controlled until—

**THE CHAIR:** It gets very serious or they start feeling damaged.

**MS CODY:** Yes.

**Ms Yates:** Indeed. That is the report of lots of our clients who end up in our office, 20 years in, saying, “It just started with this and that, and it was not until”—

**THE CHAIR:** It is a good conversation to have in a public hearing because it is good for people to think about. I have experienced anxiety most of my life, but it was not until my late 20s that I recognised it. It is amazing how much a person can just continue.

**Ms Yates:** Indeed.

**THE CHAIR:** And also put some terminology around it. Anyway, any suggestions that you have in that space we would be most welcoming of, around how conversations can be had and so on, and information for the public. We can include some of that in our report, if that is helpful, and then it will get further discussion going.

**Ms Yates:** As an extension of that, I know that in the conversations about development of the family safety hub there has been a lot of discussion with different

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marginalised community groups about “What language works for you?” What would open you to having a conversation?” The Coordinator-General for Family Safety might have some contributions on that.

**THE CHAIR:** Yes. We asked her to come a bit later in the piece so that we would have a lot more ideas. Thank you for your attendance today. With the questions that you undertook to answer or provide more information on, on notice, whilst the committee has not set a deadline for those responses it would be great if we could have them within two weeks of the hearing or as time permits. When available, a proof transcript of what has been said today will be forwarded to you and you can respond if you think anything has been miswritten.

**The committee adjourned at 11.28 am.**