

Domestic Violence duty lawyer services for Queensland Courts

Proposal to the Queensland Government

December 2014



Queensland Association of Independent Legal Services Inc



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About QAILS

The Queensland Association of Independent Legal Services (QAILS) is the state based peak body representing funded and unfunded Community Legal Centres (CLCs) operating throughout Queensland. There are 33 independent community legal centres in Queensland and over 200 throughout Australia. QAILS:

- promotes the development of community legal centres.
- enhances communication and cooperation between community legal centres.
- secures and develop funding for community legal centres
- represents the interests and opinions of members

QAILS does not provide legal advice but may make referrals to member services.

Executive summary

The Queensland Association of Independent Legal Services Inc (QAILS) is the peak body representing funded and unfunded community legal centres across Queensland. Community legal centres are independently operating not-for-profit, community-based organisations that provide free legal services to the public, focusing on the needs of people experiencing disadvantage and marginalisation. QAILS is the peak organisation for Queensland's community legal centres, working towards a fair and just Queensland. To achieve this, QAILS supports and develops community legal centres to provide effective, high quality services to their communities, and leads to unite its members and be a leading voice for social justice.

Responding appropriately to domestic and family violence is a key concern for our members. In 2013-14, QAILS members provided almost 5,500 instances of legal advice to clients in the area of family violence (representing almost one in six of every family law advices provided) and provided ongoing casework/representation in over 1,100 matters, representing one in eight of **all** casework activities undertaken by Queensland community legal centres. In addition, a large (but immeasurable) number of clients accessing Queensland community legal centres with other legal problems have experienced domestic or family violence.

With this experience, and working to support our client communities' legal needs, QAILS's Families and Children Network has prepared this proposal for a domestic violence duty lawyer service.

QAILS recommends the creation of a duty lawyer service offering information, legal advice, casework assistance and representation for vulnerable applicants who have matters before a Domestic Violence Court in Queensland.

In QAILS's view, the current lack of legal assistance available to people attending Queensland's domestic violence courts¹ to apply for a domestic violence order, or respond to an application for an order, results in trauma, unjust outcomes, and increased systemwide costs (financial and social). A specialist domestic violence duty lawyer service will provide an effective response for the thousands of people who come into contact with the Courts in this jurisdiction, and ensure effective responses to domestic and family violence.

¹ For the purposes of this submission, a 'Domestic Violence Court' includes any court with a specialist list for domestic violence applications. Currently, QAILS understands that 77 of Queensland's 117 Magistrates' Court locations (including circuit courts) have a specialist list, which may sit every day that the Court is open (eg. Rockhampton, Southport) to a few days per year (eg. Quilpie, Tambo, Blackall, Winton, Inglewood, Mitchell).

Purpose and aims of the Proposal for domestic violence duty lawyer services

On behalf of its member community legal centres, the Queensland Association of Independent Legal Services (QAILS) seeks government support and funding to establish a network of Duty Lawyers in Domestic Violence Courts in priority areas in Queensland.

Community legal centres are recognised by both government and the community as cost effective providers of high quality, holistic and free legal services.

Community legal centres are like a 'safety net' – that sits underneath all other legal service provider options, catching those vulnerable members of our community whose legal needs have fallen through the cracks.

Many Queensland community legal centres have specific expertise in the areas of domestic and family violence and related family law matters and have formed a QAILS Families and Children Network and have contributed to this Proposal.

This Proposal aims to establish a duty lawyer service offering information, legal advice, casework assistance and representation for vulnerable women who have matters before a Domestic Violence Court in Queensland.

Services will be targeted to those people who are unable to afford a private solicitor, have been refused Legal Aid assistance and/or may be experiencing economic, social, mental, cultural, demographic, language or other barriers to accessing the legal help they need.

Services will be provided at the Courts and also by way of follow up appointments as required at the community legal centres.

The community legal centres will work collaboratively with the Court Registrars, other legal service providers, Domestic Violence Resource Services, Queensland Police and other community stakeholders.

In the event that the community legal centre domestic violence duty lawyer service is unable to assist, that person will be referred to and connected with an alternative community and / or legal service provider within the established Community Integrated Response referral pathways.

Why we need domestic violence duty lawyers in Queensland courts

The Queensland government has recognised that deep and broad systemic issues need to be addressed to reduce the incidence of domestic and family violence. To this end, a Domestic Violence Taskforce (the Taskforce) has been established and submissions have been sought from the community and community consultations have occurred.

The Taskforce will report to Government in February 2015.

The establishment of the Taskforce evidences the great need for new approaches and for increasing available services to work towards reducing the incidence of domestic and family violence in Queensland.

In instances where the Police are unable to assist a victim of domestic violence, that woman is often faced with the daunting prospect of a court appearance without the benefit of legal advice or representation and sometimes with the perpetrator of the violence in attendance.

This frequently results in an already fearful and traumatised woman feeling unable to cope with the legal process and the court hearing. Many victims simply give up because the 'system' is too overwhelming, their fear is too great and they are therefore left at risk of harm and further violence - without a Protection Order.

QAILS member community legal centres believe that access to justice is a basic human right – particularly where safety is the central issue.

Every victim of domestic violence should have access to legal advice before going into Court, as well as an advocate available in the court to ensure that their safety is protected as far as the legal system can provide. As the following case study shows, access to legal assistance is effective:

When Ben and I were first married it was wonderful. We moved into a new house, we settled down and I had my first child.

After my third child I experienced depression. I didn't feel like I could cope so I sought counselling. It helped but I started to realise how many problems there were with my marriage.

Ben would pick on me, just trying to provoke me. To everyone but me and the kids he was Mr nice guy.

One night when we were out he got blind drunk. He screamed at me and accused me of having an affair. Of course I wasn't having an affair, but the kids heard everything. I knew it wasn't safe to go home, so I stopped the car to get the kids out. As I was unbuckling one of them, he moved into the driver's seat and took off with me hanging out of the car and the kids screaming. That was it, and that night I packed my bags and the kids and I left.

But this was just the beginning. He found out where we were staying. At night he would come over and stand outside my front door. He hacked into my emails so he would know

what I was doing. He would happen to just bump into me where I was shopping or drive alongside me on the roads.

I can't describe what it's like to never feel safe. To never know if he's outside the door, to hear every noise and wonder if it's him, to check on the kids too often, to never relax.

I have taken out protection orders and tried to get sole custody but he has fought me tooth and nail. When my Legal Aid funding ran out I found Women's Legal Service. They were amazing. They understood my situation and gave me legal advice and support which was invaluable.

I am now trying to move on. Thank god the Women's Legal Service is on my side and helped me stand up and find my voice.²

This Proposal to establish a network of Duty Lawyers in domestic violence Courts is a step towards meeting a significant gap in legal service delivery for Queenslanders. It will increase access to justice and increase safety for women and children.

We point out that this Proposal links to submissions made by QAILS and individual Queensland community legal centres to the domestic violence Taskforce.

The Taskforce submissions point to the many problems facing the community.

This Proposal points to an **achievable solution** to one of the many identified problems.

We submit that **access to justice is a major issue** that the community must address if we want to respond appropriately to the rising incidence of domestic violence in Queensland.

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² Women's Legal Service Queensland Inc, 2012 Annual Report.

Domestic and family violence statistics

Data from the Courts

The table at **Annexure A** shows statistics obtained from Queensland Magistrates' Courts for a period of 2 years. The table has calculated a percentage rating for each Court against the State totals for originating applications.

Data from Queensland Police

In 2012-13, QPS data shows that a total of 64,246 domestic violence occurrences were reported.

QPS data also shows that a total of 22,890 originating applications were made for Protection Orders in Queensland Courts in the same period.

QPS data shows that approximately 36% of these applications were made privately. That is, the applicant was not represented by the Police Prosecutor.

Deaths occurring due to Domestic Violence

The Australian Institute of Criminology reported that 36% of all homicides take place in a domestic setting and 73% of these involve a woman being killed by a male partner or former partner.

Each year in Australia, on average 72 women die because of domestic and family violence.

Each year in Queensland, on average 12 – 14 people die because of domestic and family violence.

In Queensland in 2011-12, there were 23 confirmed deaths linked to domestic and family violence and this equates to 44% of homicides in the State.

The rate of domestic violence incidents in Queensland has risen by 7% each year for the past 10 years.

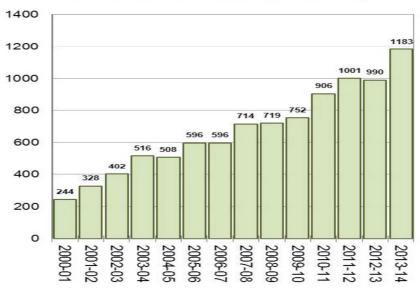
Increasing domestic and family violence against older people

Community legal centres assist a large number of vulnerable older Queenslanders who are subject to 'elder abuse', which can manifest as domestic/family violence. Despite recognising that elder abuse is significantly underreported,³ the 2013-2014 annual report of the Elder Abuse Prevention Unit shows that notifications of elder abuse continue to increase:⁴

³ See Office of the Public Advocate (Qld) and Queensland Law Society, *Elder Abuse: How well does the law in Queensland cope?* (2010).

⁴ Available at http://www.eapu.com.au/uploads/annual_reports/highlight_reports/2014_Aug_HighlightReport.pdf.





Urgent need for change

These statistics highlight the need for broad systemic changes, for community education programs and for greater access to justice and legal help.

The need for change is urgent.

Domestic violence duty lawyer services - Priority Locations

During 2013-14, there were three (3) community legal centres that were providing domestic violence duty lawyer services in Queensland.

These domestic violence duty lawyer services operate in the top ten (10) Queensland Courts based on the number of originating applications being filed. These were:

- North Queensland Women's Legal Service at Cairns Magistrates Court
- North Queensland Women's Legal Service at Townsville Magistrates Court
- Women's Legal Service Queensland at Holland Park Magistrates Court
- Gold Coast Community Legal Centre at Southport Magistrates Court (Legal Aid Queensland recently commenced a pilot service at this Court)

The table and statistics at the **Attachment** shows the number of originating applications for Protection Orders made in twenty (20) Queensland courts as follows:

Southport	2156	Toowoomba	692
Beenleigh	1844	Richlands	668
Brisbane	1261	Pine Rivers	653
Ipswich	1204	Cleveland	631
Townsville	1114	Redcliffe	628
Cairns	1065	Mackay	549
Rockhampton	991	Mount Isa	464
Caboolture	933	Bundaberg	444
Maroochydore	760	Sandgate	410
Holland Park	697	Gladstone	370

Queensland's community legal centres are located in close proximity to all of the Queensland Courts listed on the **Attachment.**

This means that all twenty (20) Courts hearing the highest number of applications in domestic violence matters could be assisted by the domestic violence duty lawyer service network proposed by Queensland community legal centres. Focussing on these courts will means regional, rural and remote areas will continue to lack this service, and we note significant research which suggests that there are higher levels of family violence in regional, rural and remote areas than in urban centres.⁵

⁵ Kerry Carrington and John Scott, 'Masculinity, Rurality and Violence,' (2008) 48 *British Journal of Criminology* 641; Anna Ferrante et al, *Measuring the Extent of Domestic Violence* (The Hawkins Press, 1996), 36-7; Russell Hogg and Kerry Carrington, 'Crime, Rurality and Community,' (1998) 31 *Australian and New Zealand Journal of Criminology* 160-81, 64; Russell Hogg and Kerry Carrington, 'Violence, Spatiality and Other Rurals,' (2003) 36(3) *Australian and New Zealand Journal of Criminology* 293, 302; Crime Research Centre, *Rural Crime and Safety in Western Australia* (Dept of Commerce and Trade, 1998), 8; WESNET, *Domestic Violence in Regional Australia: A Literature Review*, 3.

In a few cases, a single community legal centre may be located so as to be able to provide a Duty Lawyer at more than one (1) Court on the respective domestic violence list days.

The variables around geographic locations and the Court's list days will be planned for further by the QAILS Families and Children's Network if this Proposal is successful.

Domestic violence duty lawyer services – the community legal centre model

The work of the community legal centres who are already providing a duty lawyer service at domestic violence Courts in Cairns, Townsville, Holland Park and Southport provides a best practice model to establish a domestic violence duty lawyer service at other Queensland courts.

The community legal centre Model for a domestic violence duty lawyer service would include the following features:

- Community legal centre lawyers, law students, community / social workers would be available to provide legal information, legal advice and in some instances representation in the Court room for women with matters before the domestic violence Court – whether they are the aggrieved or the respondent.
- Advice or representation would be provided in relation to the first (or subsequent procedural) mention / hearing including adjournments, directions, temporary orders and orders by consent.
- Further legal assistance would be considered on a case by case basis and in accordance with guidelines and available resources, in exceptional circumstances.
 However, these guidelines would not be as strict as Legal Aid guidelines, allowing greater flexibility and ensuring more holistic services.
- Community legal centres provide legal help from a holistic framework to ensure that other related legal and non-legal problems are addressed such as family law issues, child safety issues, personal safety issues, housing, income support, property issues, and debt problems. Community legal centres would provide information, referral and legal advice about these matters at a follow up appointment at the community legal centre office (in addition to the legal assistance provided at the Domestic Violence Court).
- Community legal centres, and especially Women's Legal Services, are members of their local Domestic Violence Community Integrated Response Networks and would ensure that men seeking help at the Court are provided with information and referral to a range of legal and support services. Those services include the local domestic violence Resource Service Men's Support Worker, DV Connect, Mensline, Court Support Network, another community legal centre, QIFVLS, Legal Aid and private practitioners.

Outcomes of domestic violence duty lawyer services

Anticipated outcomes arising from the implementation of domestic violence duty lawyer services at Queensland courts would include the following:

- Women and older people with matters before a Domestic Violence Court will have access to legal advice and court representation (in accordance with guidelines)
- Victims will have access to ongoing legal advice and assistance in accordance with their legal needs, arising from their domestic and family violence matter
- Victims will have assistance with the preparation of legal and other documents to ensure all relevant information is available for consideration when their matter is being heard by the Court
- The Court process will indirectly benefit (the 'flow on' effect) as a consequence of properly prepared documents and legally informed clients appearing before it
- Queensland Police Prosecutors will indirectly benefit (the 'flow on' effect) as a consequence of the work undertaken by the domestic violence duty lawyer service in the same way the Court will, as described above
- Victims will obtain appropriate conditions on their Protection Orders as a consequence of the legal advice and assistance provided
- Because they have access to the legal advice they need, victims will be empowered to pursue their matters and not withdraw because of fear or intimidation by the aggressor or because of lack of knowledge and complexity of the legal system. The result will be greater safety for older people, women and children experiencing domestic violence.

Measuring the outcomes of domestic violence duty lawyer services

Outcomes and key performance measures can be established in consultation between the Queensland government and the community legal centres.

Outcomes will be measured to assess whether the domestic violence duty lawyer service is achieving what it intends to achieve.

In addition, an evaluation of domestic violence duty lawyer services will be conducted at the end of the first twelve (12) months of operation and annually thereafter.

Reports will be prepared by the community legal centre and provided to the Queensland government as a condition of funding.

The outcome measurement and evaluation tools will be designed by the community legal centres in consultation with the Queensland government and community stakeholders to ensure that the domestic violence duty lawyer services operate on a **model of continuous improvement.**

The outcome measurement and evaluation tools will include **qualitative** feedback from clients of the community legal centre and from other stakeholders.

Case studies which exemplify the work undertaken and the benefits of the outcomes will be compiled.

Quantitative data of the legal services provided by the domestic violence Duty Lawyer will be collected and entered into the CLSIS database, in the same way that all community legal centre work is recorded.

Community benefits arising from domestic violence duty lawyer services

Benefits to the community arising from increased access to the legal help needed by people experiencing domestic violence are many, but cannot readily be quantified.

Victims and survivors who have obtained a Protection Order with appropriate conditions and who are informed of their legal position, options and rights are strengthened to make choices about their lives which will lead to increased safety, health and wellbeing for themselves and for their children.

In order to reduce the repetition of abusive or violent behaviours towards women, it is of paramount importance to protect children from the lifelong impacts of living with domestic violence.

Families whose children are kept safe from domestic violence, who learn that domestic violence can be stopped and that they have legal rights, are less likely to experience the negative and often destructive effects on their lives and to avoid future legal and social problems. However, QAILS notes that the role of children in the legal response to domestic violence fails to adequately recognise their rights, including having their voices heard in court and being properly advised and supported.

The oft quoted phrase of Lord Chief Justice Hewart that: 'not only must justice be done, it must also be seen to be done' is a truth that is vital to ensure that the community has confidence in the justice system.

When people continuously hear of increasing rates of domestic violence, or of another death as a consequence of domestic violence, unspoken questions arise in the minds of many – such as "How does our justice system protect the vulnerable?" and "Where is the justice here?"

The domestic violence duty lawyer service will immediately provide increased access to justice and legal help for those who need it. Better outcomes from the Court process as a result of that legal help can help to restore faith in 'the system'.

Perceptions of justice shape community attitudes and attitudes lie at the foundation of how we function as a community. Restoring confidence in the justice system is one many of the 'big' attitudinal changes that is needed to address the issue of domestic violence in Queensland.

Volumes have been written about the benefits of access to justice and the power of community education. The combination of both can achieve the transformation of attitudes and behaviours – if we prioritise the resources needed to provide them.

The enormous financial burden to the community arising from the far reaching social, legal and health consequences of domestic and family violence will **reduce** at a proportionate level, as we find the will to **increase** safety for older people, women and children and reduce violence in the home and in the community.

Cost of Implementation of domestic violence duty lawyer services

Existing domestic violence duty lawyer services provided by community legal centres have not been specifically funded by government:

- North Queensland Women's Legal Service is using time limited project funds to provide a duty lawyer service in both Cairns and Townsville Magistrates' Courts.
- Gold Coast Community Legal Centre has recently exhausted its resources to continue the domestic violence duty lawyer service at Southport Magistrates' Court.
- Women's Legal Service Queensland is also using time limited funds for the domestic violence duty lawyer service at Holland Park Magistrates' Court.

For the purposes of this Proposal, funding for a full time community legal centre lawyer with associated operational costs, would mean that a domestic violence duty lawyer service (including the follow up legal services outlined above) could be established in each priority area within an established community legal centre in a short time frame.

The cost of a full time lawyer and associated operational costs for a community legal centre in Queensland is approximately \$125,000.

QAILS has identified the top twenty Court locations for domestic violence applications in the **Attachment**; while the cost of establishing this network could be achieved in phases, a full network of services in these locations would cost approximately **\$2.5m per year** (plus indexation).

The Proposal also recommends funding for a position of a Queensland Coordinator for the domestic violence duty lawyer services Network. This would ensure implementation of a best practice model across Queensland Courts. The position would also be responsible for measuring outcomes and evaluation of the Network overall. Funding for the State Coordinator position, placed within a community legal centre, would require additional funds of approximately \$125,000.

A Report titled 'The cost of Violence against Women and their Children' prepared for the National Council to Reduce Violence against Women & their Children estimated the direct and indirect cost of domestic violence to the Queensland government in 2007-08 was **\$111 million**.

Of course, governments aren't the only parties who suffer financial loss as a result of family and domestic violence. KPMG estimates that violence against women and their children cost the Australian economy \$14.7 USD billion in 2012-13 (using current exchange rates). The cost of this violence is roughly 1.1% of Australia's GDP or for every man, woman and child – \$6500 USD per person. The nature of these costs include the following cost categories:

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⁶ Liz Forsyth, *Cost of Violence against Women*. Paper presented at White Ribbon International Conference, Sydney, 13–15 May 2013. Available at http://www.whiteribbon.org.au/uploads/media/Conference_2013/The_cost_of_violence_in_Australia_Liz_Forsyth_KPM

- pain, suffering and premature mortality costs associated with the victims/survivors experience of violence. This is the largest cost category comprising 48% of all costs
- health costs include public and private health system costs associated with treating the effects of violence against women.
- **production-related costs**, including the cost of being absent from work, and employer administrative costs (for example, employee replacement).
- **consumption-related costs** including replacing damaged property, defaulting on bad debts and the costs of moving
- second generation costs are the costs of children witnessing and living with violence, including child protection services and increased juvenile and adult crime.
- administrative and other costs, including police, incarceration, court system costs, administrative and other costs, counselling, and violence prevention programs.
- **transfer costs**, which are the inefficiencies associated with the payment of government benefits.

Establishing the domestic violence duty lawyer services will result in large **cost savings** for government. Benefits to the community will be shown in the areas of justice, health and social wellbeing. A network of domestic violence duty lawyer services, resourced and established through the existing community legal centre network, is a good investment for Queensland.

Summary

The QAILS Families and Children Network submit that the Queensland government should consider providing funding to establish a domestic violence duty lawyer service, embedded within existing community legal centres, as one of the responses to tackling the rising problem of domestic violence, as an outcome of the domestic violence Taskforce and as a response to the community submissions it has received.

The total cost of establishing a domestic violence duty lawyer services network in twenty (20) locations near Queensland Domestic Violence Courts is **\$2,500,000** per annum.

The existing community legal centre network is ideally positioned to provide the domestic violence duty lawyer services in the most holistic and cost efficient way.

The economic benefits of providing legal services through community legal centres has been examined and the National Association of Community Legal Centres (NACLC) report titled "Economic Cost Benefit Analysis of community legal centres" states that the cost / benefit ratio for government funding is 1:18.

That is, for every dollar spent by government on funding community legal centres, the community legal centre returns a benefit to society that is 18 times that cost.

Community legal centres add significant value to their funding by attracting over 4,500 volunteers including law students (future legal volunteers) and 24,000 hours of work per week across Australia each year.

The domestic violence duty lawyer service network could be established incrementally if necessary, however until women have access to legal advice and representation in Domestic Violence Courts in Queensland, this unjust and unmet legal need will remain.

Through seeking funding to establish the domestic violence duty lawyer service network, community legal centres aspire to achieve better outcomes for thousands of Queensland victims each year who have matters in the Domestic Violence Courts.

It is the wish of the whole community that the safety of older people, women and their children is prioritised by the Queensland government.

⁷ The report can be found at http://www.naclc.org.au/resources/Cost_Benefit_Analysis_Report.pdf

Attachment: 'Top twenty' Queensland courts by number of originating applications

2011- 2012 ranking	2012- 2013 ranking	Court	Number of Applications	Number of Orders Made					% of State Total	Number of days/week with		
				RoGS (Originating Applications)	Protection Order	Temporary Protection Order	Vary Protection Order	Revoke Protection Order	Total Orders	Number of Originating Applications Dismissed	(Originating Applications)	specialist DV list
1	1	Southport Duty lawyer service provided by Gold Coast CLC	2156	1587	1300	252	25	3164	567	9.06%	5	
2	2	Beenleigh	1844	1347	1415	232	11	3005	459	7.75%	4 (M,T,W,T)	
3	3	Brisbane	1261	1029	589	148	1	1767	273	5.30%	2 (T,W)	
5	4	Ipswich	1204	923	555	141	0	1619	237	5.06%	1 (M)	
4	5	Townsville Duty lawyer service provided by Women's Legal Service NQ	1114	830	690	192	4	1716	276	4.68%	3 (M,W,F)	
6	6	Cairns Duty lawyer service provided by Women's Legal Service NQ	1065	867	430	173	0	1470	198	4.48%	1 (Th)	
9	7	Rockhampton	991	868	335	174	0	1377	116	4.16%	5	
7	8	Caboolture	933	640	519	144	2	1305	285	3.92%	1 (Th)	
8	9	Maroochydore	760	624	312	85	2	1023	144	3.19%	1 (Tu)	
10	10	Holland Park Duty lawyer service provided by Women's Legal Service	697	536	533	96	2	1167	184	2.93%	1 (W)	
12	11	Toowoomba	692	544	338	127	1	1010	124	2.91%	1 (Th)	
11	12	Richlands	668	467	307	80	1	855	204	2.81%	1 (F)	
14	13	Pine Rivers	653	428	334	90	1	853	197	2.74%	1 (W)	
13	14	Cleveland	631	540	426	96	1	1063	113	2.65%	1 (W)	
16	15	Redcliffe	628	502	406	171	4	1083	113	2.64%	1 (Th)	
15	16	Mackay	549	454	330	94	0	878	86	2.31%	3 (M,T,W)	
23	17	Mount Isa	464	396	171	199	0	766	34	1.95%	1 (Tu)	
17	18	Bundaberg	444	362	229	80	0	671	106	1.87%	1 (W)	
18	19	Sandgate	410	340	251	81	1	673	78	1.72%	1 (Tu)	
24	20	Gladstone	370	306	155	54	0	515	49	1.56%	1 (M)	

