

Safe and Equal Submission into the Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Intervention Orders

August 2024

Acknowledgement of Traditional Owners

Safe and Equal acknowledges Aboriginal and Torres Strait Islander peoples as the traditional and ongoing custodians of the lands on which we live and work. We pay respects to Elders past and present. We acknowledge that sovereignty has never been ceded and recognise First Nations peoples' rights to self-determination and continuing connections to land, waters, community and culture.

Recognition of Victim Survivors

Safe and Equal recognises the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue.

About Safe and Equal

Safe and Equal is the peak body for Victorian organisations that specialise in family and gender-based violence across the continuum, including primary prevention, early intervention, response and recovery. Our vision is a world where everyone is safe, respected and thriving, living free from family and gender-based violence.

Our work prioritises the safety of all people experiencing, recovering from or at risk of family and gender-based violence. While we know that most family violence is perpetrated by men against women and children, we recognise that family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and other relationships. We apply an intersectional feminist lens in our work to address the gendered drivers of violence, and how these overlap and intersect with additional forms of violence, oppression and inequality.

We believe in and work towards a world where people are not only safe and free from family and gender-based violence but are respected for who they are and thriving in their lives.

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Introduction

Safe and Equal welcomes the opportunity to contribute to the Standing Committee on Social Policy and Legal Affairs Inquiry into family violence intervention orders.

As recorded in the *Federal Circuit and Family Court of Australia Family Violence Plan 2023-26*¹, family violence is a major risk factor prevalent in the work of the federal courts. Family violence risk is also a significant factor in the work of other courts, including state-based Magistrates' Courts. While both court systems recognise the impact of family violence and have strategies in place to mitigate risk and reduce trauma, Australian court systems are complex and difficult to navigate. Where family violence is present, the process of navigating two court systems – for example, the Magistrates' Court for intervention orders to manage safety, as well as the Federal Circuit and Family Court of Australia (FCFCOA) for parenting and property orders – can be overwhelming, time consuming and expensive.

While the FCFCOA and the Magistrates' Court recognise the impact of family violence and the need to ensure court processes are safe for victim survivors, Safe and Equal's consultation with our members in preparation for submitting to this inquiry indicates that further work is required to support victim survivors to safely and actively participate in their own legal cases.

This submission is structured in two parts:

- i. Issues/risks to victim survivors that need to be considered when making any changes to the practice, process or powers associated with courts issuing Family Violence Intervention Orders (FVIO)²
- ii. Recommendations on improvements to FCFCOA practice and processes to assist victim survivors to access a FVIO when needed and improve their experience of the family law system.

We recognise this is a federal inquiry concerned with a federal branch of the courts. However, the FCFCOA does not operate in a legal silo. It is essential that any changes to family law and the operation of the FCFCOA consider the potential flow on impacts to state and territory-based Magistrates' Courts and vice versa. There are a several areas of practice that could be implemented by the Magistrates' Court³ to strengthen practice on FVIOs and the intersection with parenting orders and family court processes. On that basis, we have included recommendations for the Magistrates' Court where relevant.

¹ [fcfcqa.gov.au](https://www.fcfcqa.gov.au/fl/fv/fv-plan-2023). (2024). *Family Violence Plan | Federal Circuit and Family Court of Australia*. [online] Available at: <https://www.fcfcqa.gov.au/fl/fv/fv-plan-2023>.

² As an organisation based in Victoria, we are using Family Violence Intervention Orders to reflect the name of FVOs in Victoria.

³ As an organisation based in Victoria, our experience is with the Victorian Magistrates' Court. We recognise there is considerable variation in practice nationally, and unless otherwise specified, when referring to the Magistrates' Court in this submission it is referring to the Magistrates' Court of Victoria.

Considerations on the intersection between family law and family violence intervention orders

Court specialisation

The need to attend different courts for associated matters relating to intervention orders and family law can be challenging and stressful for victim survivors. However, it is important to acknowledge the breadth of knowledge and specialisation of courts in their respective jurisdictions. As the scope of family law and intervention orders is different, this results in the courts' operations varying in line with the boundaries of their jurisdiction.

The Terms of Reference for this enquiry notes co-location as a possible option to make FVIOs more accessible for victim survivors who have matters with the family court. We note the following considerations for this potential option:

- Co-location of matters could, rather than streamlining access and reducing stress, create additional barriers to accessing the justice system. For example, the Magistrates' Court provides a rapid response to family violence incidents, with applications for FVIOs heard within a few days of police attending an incident. The court's ability to quickly respond to family violence is critical for the safety of victim survivors. If co-location of the courts caused a delay in issuing FVIOs this could increase risk for victim survivors.
- FCFCOA Magistrates and staff have in-depth knowledge on family law and are seeking to increase their knowledge and expertise in family violence. The FCFCOA is not as accessible as the Magistrates' Court, as they are often located in capital cities. For rural and regional court users, there can be considerable costs and inconvenience associated with travel.

The effectiveness of parenting orders and family violence intervention orders

FVIOs and parenting orders are key tools at the courts' disposal that can be used to keep adult and child victim survivors safe. Research, practice guidance from member organisations, and victim survivors note that these orders are not always effective due to the conditions not being fit for purpose, being too general or compliance with the orders not appropriately enforced.

In the Australia's National Research Organisation for Women's Safety (ANROWS) report *Compliance with and Enforcement of Family Law Parenting Orders*,⁴ parents and carers, professionals and judicial officers noted concerns about safety and history of family violence not being adequately considered in negotiations or parenting order proceedings, resulting in inappropriate or unsafe parenting orders. The report also found that breaches of parenting orders are common, but rarely formally addressed, for reasons including

⁴ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Compliance with and enforcement of family law parenting orders: Final report. [online] Available at: <https://www.anrows.org.au/publication/compliance-with-and-enforcement-of-family-law-parenting-orders-final-report/>.

cost, delay, trauma, ineffectiveness of previous resolutions, uncertainty about the outcome and fear of the other party.

Information from practitioners in the specialist family violence sector indicates that police are often reluctant to enforce breaches of FVIOs when there is a parenting order in place. When family violence is present, it is a safety risk if a parenting order does not adequately account for the family violence and the safety needs of the adult and child victim survivors. Breaching a FVIO is listed as one of the evidence-based risk factors in the *Victorian Statewide Family Violence Multi-Agency Risk Assessment and Management Framework* (MARAM)⁵. Breaching FVIOs indicates an unwillingness to abide by conditions set by the court and a disregard for the law and authority. This behaviour is a serious indicator of increased risk of future violence and is a high-risk indicator for homicide.

The mechanism for rectifying breaches of parenting orders is through the family law system. Although breaches of any order are recognised by MARAM as a risk factor for future family violence, breaches of parenting orders can only be addressed through submissions to the FCFCOA. This process takes time and can be traumatic and expensive. Magistrates do have the authority to suspend, vary or adjust a parenting order if they are concerned about the safety of children, however our members report that they rarely do so.

Strategies to make both parenting orders and FVIOs more effective do not necessarily need to include changes to how these orders are issued or by which court. However, improved communication and alignment between the federal and state-based court systems is vital. As outlined in Women’s Legal Services Australia *Safety First in Family Law*⁶, there are a number of steps that could be implemented by the courts that would increase the effectiveness of parenting orders and FVIOs and by extension increase the safety of adult and child victim survivors of family violence:

- Strengthen family violence response in the family law system
- Provide effective legal help for the most disadvantaged
- Ensure family law professionals have a real understanding of family violence
- Increase access to safe dispute resolution models
- Overcome the gaps between the family law, family violence and child protection systems.

We acknowledge that there are strategies in place to address some of these issues, including the *Federal Circuit and Family Court of Australia Family Violence Plan*⁷, the *Family Law Amendment Act (2023)* and the *Family Law Amendment (Information Sharing) Act (2023)*. However, additional initiatives can supplement these changes to

⁵ Victorian Government (2021). Evidence-based risk factors and the MARAM risk assessment tools | Victorian Government. [online] www.vic.gov.au. Available at: <https://www.vic.gov.au/maram-practice-guides-foundation-knowledge-guide/evidence-based-risk-factors-and-maram-risk>.

⁶ Safety First in family law (n.d.). Available at: https://www.wlsa.org.au/wp-content/uploads/2022/03/Safety_First_in_Family_Law_One_Page_Brochure.pdf [Accessed 30 Jul. 2024].

⁷ FcfcOA.gov.au. (2024). Family Violence Plan | Federal Circuit and Family Court of Australia. [online] Available at: <https://www.fcfcOA.gov.au/fl/fv/fv-plan-2023>.

ensure court processes are trauma informed for victim survivors and are not utilised to perpetrate family violence via systems abuse.

In a 2022 ANROWS study,⁸ better ways of addressing family violence risk in the family law system was endorsed by 84 per cent of participants as a measure that would reduce non-compliance with parenting orders. Suggestions to address this included:

- specialised screening and assessment approaches for matters involving family violence and/or child abuse and where children have health or other needs
- case management support to ensure that litigation proceeds in a way that is not adverse to child wellbeing
- post-order practice (e.g. consultation, counselling or mediation) to provide sufficient flexibility to accommodate children's changing needs and circumstances over time
- a process to encourage the safe exercise of children's agency in seeking changes to arrangements when needed.

Safe and Equal's consultation with members has provided several additional considerations including:

- the need for assistance for both parties to better understand court systems and processes prior to the court date
- the potential for a post-proceeding process to continue to keep the perpetrator in view and assist with keeping victim survivors safe.

Information sharing

We welcome the introduction of the *Family Law Amendment (Information Sharing) Act (2023)*, which provides for greater information sharing between courts. It is essential that this amendment is utilised and information relevant to the safety of adult and child victim survivors is shared between courts in a timely manner. Information contained within FVIOs, past and present, needs to be taken into consideration to ensure that parenting orders do not contradict FVIOs or create additional safety risks for children and their carer/s.

While the *Family Law Amendment (Information Sharing) Act (2023)* creates an opportunity to improve the way FVIOs and parenting orders intersect, learnings from the implementation of the Family Violence Information Sharing Schemes in Victoria indicate that legislative change alone is insufficient to change practice. In order to create robust systems change, accompanying resourcing for training and socialising the amendments is required. Implementation should also include clear guidelines on how information is shared, and with whom. It is critical that information sharing provisions that are intended

⁸ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Compliance with and enforcement of family law parenting orders: Final report. [online] Available at: <https://www.anrows.org.au/publication/compliance-with-and-enforcement-of-family-law-parenting-orders-final-report/>.

to increase safety for victim survivors do not inadvertently create additional risk. As submitted to the Parliamentary Select Committee Inquiry into Family Law by ANROWS,⁹

- information sharing in the family law system must be focused on perpetrator risk and history as this prevents compromising the safety of women and children
- information sharing must be designed using a victim-centred approach that requires the victim/survivor's informed consent, ensuring the victim/survivor has a clear understanding of what information will be shared, when it will be shared, and with whom it will be shared.

Misidentification is another consideration for information sharing. Information needs to be interrogated rigorously and shared with care to minimise the risk of a victim survivor of family violence being misidentified as a perpetrator, and this leading to misidentification occurring across the justice system.

Misidentification

Misidentification of victim survivors as perpetrators of family violence was recognised as a significant issue in the *2016 Victorian Royal Commission into Family Violence (RCFV)*.¹⁰ Recommendation 41 of the RCFV specified that Victoria Police make changes to their database to enable rectification of misidentification, in addition to practice changes to prevent it from occurring. However, misidentification of victim survivors remains a significant issue.

Misidentification impacts some victim survivors disproportionately. inTouch Multicultural Centre Against Family Violence¹¹ estimating that at least a third of their clients were misidentified at some stage. Djirra reports that at least 20 per cent of their clients have experienced mis-identification.¹²

Misidentification, through cross-applications or groundless applications for FVIOs, is commonly used by perpetrators to commit systems abuse. Misidentification can have significant impacts, including being used to justify separating children from their non-violent parent, resulting in increased risk to children by placing them in the care of a carer who uses family violence.

When making parenting orders, the FCFCOA needs to consider conditions listed in current and previous FVIOs. However, in cases of misidentification, mirroring FVIO conditions in parenting orders can entrench the consequences of misidentification and systems abuse. Where cases of misidentification occur, the delay for family court matters

⁹ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Australian Government's Joint Select Committee on Australia's family law system. [online] Available at: <https://www.anrows.org.au/resources/australian-governments-joint-select-committee-on-australias-family-law-system/> [Accessed 19 Jul. 2024].

¹⁰ rcfv.archive.royalcommission.vic.gov.au. (n.d.). RCFV - Royal Commission into Family Violence (Victoria). [online] Available at: <http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>.

¹¹ The causes and consequences of misidentification on women from migrant and refugee communities experiencing family violence n.d., viewed 19 July 2024, <<https://intouch.org.au/wp-content/uploads/2023/10/inTouch-Position-Paper-Misidentification-February-2022.pdf>

¹² djirra.org.au. (n.d.). Djirra welcomes the Victorian Government's statement that more MUST be done to support victim-survivors | Djirra – Sharing stories finding solutions. [online] Available at: <https://djirra.org.au/djirra-welcomes-the-victorian-governments-statement-that-more-must-be-done-to-support-victim-survivors/> [Accessed 19 Jul. 2024].

to proceed can provide time for solicitors to engage with the system on behalf of survivors to try to rectify misidentification.

In principle we support streamlining processes between FVIO and parenting orders and ensuring courts are sharing relevant information. In cases of misidentification, streamlining these processes may have unintended consequences and is one instance where parenting orders should not mimic the conditions of an FVIO. It is essential that processes are in place to address and correct misidentification and ensure that these legal errors are not replicated across systems through increased access to information sharing.

A family violence informed lens across all courts, combined with timely information sharing, access to legal advice and representation and specialist family violence support is necessary to safeguard against misidentification and the resulting safety risks.

Best interests of the child

We welcome the *Family Law Amendment Act (2023)* incorporating factors to be considered when determining the best interests of the child, including the safety of the child and each person who has care of the child and the child's expressed wishes. The inclusion of new subsection 60CC(2A) that highlights the relevance of family violence intervention orders and past family violence, abuse and neglect in determining future parenting arrangements is also significant. Parenting orders should consider the terms and conditions of FVIOs and ensure they do not conflict.

As ANROWS recommended in their submission,¹³ there is a need for the family violence and family law systems to shift attention from only focusing on the risk and safety concerns for the protective parent to also focus on the perpetrator's use of violence. This includes the use of coercive control and systems abuse and the ways this impacts the safety and wellbeing of children and their mothers.

It is critical that the reforms in the *Family Law Amendment Act (2023)* related to children's opinions and preferences being considered are prioritised for implementation. The child's safety and best interests should be the primary consideration when parenting orders are developed.

Systems abuse

Systems abuse refers to the manipulation of the legal system by perpetrators of family violence, done so in order to exert control over, threaten and harass a partner (current or former)¹⁴. As a result of systems abuse, victim survivors may end up with parenting orders that do not take into account their safety needs, and they often do not have the financial resources to continue the family law process. This means victim survivors must choose

¹³ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Compliance with and enforcement of family law parenting orders: Final report. [online] Available at: <https://www.anrows.org.au/publication/compliance-with-and-enforcement-of-family-law-parenting-orders-final-report/>.

¹⁴ Reeves, E. (2018). Research Brief Systems Abuse. [online] Available at: https://arts.monash.edu/__data/assets/pdf_file/0005/1529852/rb-systems-abuse.pdf [Accessed 5 Aug. 2024].

between either having their children in unsafe situations, or risk being in breach of parenting order conditions.

A 2022 ANROWS study¹⁵ involving interviews with professionals working in family law found that complying with orders which parents did not feel were safe was common. Eighty-eight per cent of participants indicating this applied to their clients “almost always”, “often” or “sometimes”. Fear of the other party was seen as an obstacle to addressing non-compliance with parenting orders by 80 per cent of participants.

The study also found that the majority of people who indicated their parenting orders had not been complied with also stated that they had not taken action in response, due to:

- impracticality in light of repeated breaches by the other parent/carer
- the view that legal action would be insufficient to stop the non-compliance
- a lack of financial resources to pursue legal action or obtain legal advice
- a fear that the party breaching the orders would retaliate with violence if action was taken
- a lack of energy to pursue the matter
- not wanting to cause trouble for themselves or their children.

Safe and Equal’s members have raised similar issues noting inequity in the family law system, including difference in outcomes when only one party has financial resources to pay private lawyers and there is limited access to community legal centres, particularly for litigation representation. An additional barrier exists if one party has accessed legal aid, and the other party is conflicted out of the access to the largest single provider of public legal services. Members suggested:

- a mandatory process for the FCFCOA to seek out and consider current and past FVIOs prior to parenting court orders
- all parenting orders should uphold FVIOs.

We welcome the introduction in the *Family Law Amendment Act (2023)* of the ability of the FCFCOA to make harmful proceedings orders and limit the ability for parents to undertake vexatious litigation and prolong family law proceedings as a form of ongoing coercive control. This will take time to be fully implemented, as systems abuse as a means of continuing to exert control over victim survivors is entrenched and endemic, particularly within family law. It is essential that implementation of the new legislation is supported by:

- training for court staff to recognise and respond to systems abuse
- practice guidance documentation
- a streamlined process for reporting and addressing breaches of parenting orders and that this process allows for variation of parenting orders as the children’s needs change.

¹⁵ ANROWS - Australia’s National Research Organisation for Women’s Safety. (n.d.). Compliance with and enforcement of family law parenting orders: Final report. [online] Available at: <https://www.anrows.org.au/publication/compliance-with-and-enforcement-of-family-law-parenting-orders-final-report/>.

Strengthening family law court practice and processes

Reduce complexity between court jurisdictions

As recognised in the terms of reference, there are multiple barriers experienced by victim survivors of family violence as they navigate the legal system. This includes, but is not limited to, needing to attend different courts to address different matters. Additional complexity is introduced when family violence matters extend across both federal and state courts. When making determinations regarding family law and parenting orders for victim survivors of family violence, the FCFCOA must apply federal law, while also considering the relevant state-based legislation, which varies across each jurisdiction, including the definition of family violence. This makes consistent application of both federal and state-based laws complex, and confusing for litigants, especially for people who live on state borders.

Developing nationally consistent family violence responses could potentially be achieved through the adoption of a principles-based approach, similar to the *National Principles to Address Coercive Control in Family and Domestic Violence*¹⁶. The current *Family Violence Best Practice Principles*¹⁷ could be adopted by the Magistrates' Court, as well as the FCFCOA, to bring greater national consistency to the justice system response to family and domestic violence. In addition, FVIOs should, by default, apply nationally with breaches investigated by police in the state in which the breach is reported.

Currently, in many communities on state borders, difficulty in determining where the breach took place means reported breaches may not be investigated. For example, it can be difficult to determine which jurisdiction should investigate technology-based abuse where the parties are in different states, even though the parties may be in the same geographic area.

Recommendations

- 1) The adoption of a national, consistent definition of family violence and nationally consistent principles for family violence related legislation
- 2) Family violence interventions orders, by default, to be national with breaches investigated in the state in which they are reported

Increased utilisation of existing powers

Safe and Equal's members have indicated that there are several areas where professionals within the justice system, including magistrates, judges, registrars and police have authority which could be exercised to streamline participants engagement

¹⁶ Attorney-General's Department. (2024). The National Principles to Address Coercive Control in Family and Domestic Violence. [online] Available at: <https://www.ag.gov.au/families-and-marriage/publications/national-principles-address-coercive-control-family-and-domestic-violence>.

¹⁷ Fcfcqa.gov.au. (2016). Family Violence Best Practice Principles - December 2016 | Federal Circuit and Family Court of Australia. [online] Available at: <https://www.fcfcqa.gov.au/pubs/fl/fvbpp>.

with the justice system, but are currently not utilised to their maximum benefit. Examples include:

- The ability for magistrates to include detailed conditions in FVIOs such as:
 - orders to pay family expenses while excluded from the home
 - conditions regarding the return of animals or property
 - specific conditions prohibiting technology-based abuse.
- Where there are parenting orders in place, and a later FVIO is made, the state or territory court making the FVIO can suspend or change an existing parenting order to ensure safety is prioritised. This is an important provision for increasing safety for children and their carers. Magistrates could be supported through clearer legal provisions and training to utilise this authority more readily.
- When there are both FVIOs and parenting orders in place, police may be reluctant to respond to breaches of the FVIO, seeing the breach as a “parenting matter” even though addressing the breach of intervention order is within their remit

Utilising current responsibilities more regularly would strengthen FVIOs, provide more effective response to current incidents, and make it less likely that the victim survivors will need to return to the FCFCOA for parenting orders to be varied.

Recommendations

- 3) The FCFCOA implements its authority under the *Family Law Amendments Act (Information Sharing) (2023)* as soon as possible, to ensure court staff seek out and consider current and past FVIOs prior to handing down parenting orders
- 4) Wherever possible parenting orders should uphold FVIOs, recognising that perpetrators taking out FVIOs or cross applications is a common form of systems abuse and needs to be taken into consideration
- 5) Provide training and support to all magistrates to increase awareness and utilisation of specific conditions on FVIOs as well as varying parenting orders when existing parenting orders are in conflict with FVIOs being put in place to enhance the safety of children
- 6) Ensure that police are aware of their authority and responsibility to respond to breaches of FVIOs, whether or not there are existing parenting orders in place
- 7) Investigate a more streamlined process for breaches of parenting orders to be reported and rectified to avoid having to repeatedly attend court – an expensive and time-consuming process for all involved, including the court

The need for a strong family violence lens to be embedded throughout court processes

As highlighted in the *Federal Circuit and Family Court of Australia Family Violence Plan*¹⁸

“The Courts recognise that family violence is widespread in Australia, affecting the physical, psychological, emotional and financial wellbeing of adults and children who experience it and live in fear of it. Family violence can be triggered or exacerbated at the time of family breakdown. Protecting family members, and particularly children, from the effects of family violence is central to all determinations of what is in a child’s best interest. Ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Courts.”

Research has shown that a majority of victim survivors have negative experiences with the family court system concerning safety issues, coercion or re-traumatisation, and traumatic legal processes.¹⁹ Court systems and processes can often mimic and entrench power imbalances found in instances of family violence. A victim survivor’s experience of the justice system is often of a complex, expensive, and time-consuming process where the burden of proof resides with them. Access to resources can determine a person’s successful outcome in legal and court processes.

Initiatives such as mediation have been introduced to address known issues. However, such strategies can often be inappropriate because of the power imbalances in family violence that mean fair, safe and equitable negotiation between parties is often impossible. In such instances, courts are needed to ensure the safety of adult and child victim survivors.

With the high level of matters at both the FCFCOA and Magistrates’ Court involving family violence, there is a need to ensure that all courts and court staff are family violence and trauma informed. Relationships between the justice and broader family violence systems need to be strengthened, with a view to embedding a family violence informed justice system to ensure that victim survivors receive a safe, fair and consistent response and that perpetrators are held to account and opportunities for systems abuse is minimised.

The Victorian Victims of Crimes Commissioner’s 2023 Report²⁰ stated that the criminal justice process can add to the trauma that victims have already experienced and can be a source of secondary victimisation. The report makes a number of recommendations aimed at making the justice system safer, fairer and more victim centred, which should be considered as part of this inquiry.

¹⁸ Fccoa.gov.au. (2024). Family Violence Plan | Federal Circuit and Family Court of Australia. [online] Available at: <https://www.fccoa.gov.au/fl/fv/fv-plan-2023>

¹⁹ ANROWS - Australia’s National Research Organisation for Women’s Safety. (n.d.). Australian Government’s Joint Select Committee on Australia’s family law system. [online] Available at: <https://www.anrows.org.au/resources/australian-governments-joint-select-committee-on-australias-family-law-system/> [Accessed 19 Jul. 2024].

²⁰ Silenced and sidelined: Systemic inquiry into victim participation in the justice system. (2023). Available at: https://victimsofcrimecommissioner.vic.gov.au/media/1pufjx5h/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf.

ANROWS's 2020 submission²¹ to the Joint Select Committee on Australia's Family Law System identified several previous reviews, with associated guiding principles and recommendations to improve the family law system. Recommendation seven states:

“Explore evidence-based tailored approaches for groups whose access to justice is curtailed in the current family law system, including Aboriginal & Torres Strait Islander women, women with disability, culturally and linguistically diverse women & women with the experience of migration, women living in rural and remote areas, and LGBTQI+ people”

Improving access to FVIOs on its own, through co-location or other means, will not make victim survivors safer. It is essential that courts operate with a family violence informed lens, and that court orders are backed up by a justice system that keeps perpetrators in view and holds them to account for their actions.

Recommendations

- 8) The relevant recommendations of the Victorian Victims of Crime Commissioner's report are considered where appropriate to make court systems, safer, fairer and client centred
- 9) The recommendations of the ANROWS submission to the Joint Select Committee on Australia's Family Law System are considered
- 10) Resourcing is made available for FCFCOA to provide legal information and support for victim survivors:
 - a. To understand and navigate the court process, including information prior to the court date about what to expect, where to go on the day, family advocacy and support services staff, applicant workers etc who can provide support
 - b. With practical assistance such as referrals to specialist family violence services, housing or legal services where required
 - c. To help litigants understand the conditions of orders and consequences of breaches
- 11) The FCFCOA is resourced appropriately to adopt a family violence, trauma informed lens, including:
 - a. Full implementation of the *Federal Circuit and Family Court of Australia Family Violence Plan 2023-26* and adoption of *Family Violence Best Practice Principles*
 - b. All court staff to be appropriately trained to recognise, understand and respond appropriately to family violence, including making referrals for support that allows victim survivors to continue their recovery

²¹ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Australian Government's Joint Select Committee on Australia's family law system. [online] Available at: <https://www.anrows.org.au/resources/australian-governments-joint-select-committee-on-australias-family-law-system/> [Accessed 19 Jul. 2024].

- c. Victim survivors to have access to legal information, advice and representation at all points of the intervention order and family law process
 - d. Victim survivors to be able to utilise the appropriate access options to support their physical and psychological safety including, but not limited to, separate entrances and waiting spaces and remote access
 - e. Victim survivors to be able to access family advocacy and support services (FASS)
 - f. Strengthening understanding of the unique issues across communities in relation to family violence and to use this information to inform practice and procedures
- 12) Ensure the additional powers and responsibilities provided under the *Family Law Amendment Act (2023)* and the *Family Law Amendment (Information Sharing) Act (2023)* are socialised and implemented. This will require resourcing including, but not limited to:
- a. System development
 - b. Training
 - c. Development of reference materials and guidelines
 - d. Support for staff to implement practice change

The importance of legal information, advice and representation

Victim survivors require access to legal advice, and representation at various points in their recovery from family violence, including when applying for or varying intervention orders, property settlement and family law proceedings. Timely access to legal advice and early intervention can ensure victim survivors are able to access their entitlements under the law, circumvent prolonged legal engagement and reduce stress and trauma related to interaction with the legal system.

Access to publicly funded legal advice and representation is very limited, particularly in family law. As reported by ANROWS, many women experiencing family violence have difficulty accessing legal representation, as they cannot afford private services but have sufficient income that they are ineligible for Legal Aid.²² This can result in parties representing themselves, or agreeing to parenting orders that they do not feel are appropriate, because of inability to afford legal representation

In addition, the cost of legal representation, combined with court costs, and lost work days to attend to legal matters can be a particularly high cost for women and may deter women from seeking a fair share of property in property settlements, entrenching the economic disadvantage of family violence.²³ Safe and Equal's members also raised the potential for systems abuse. For example, victim survivors can incur costs to attend court, to find that

²² ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Australian Government's Joint Select Committee on Australia's family law system. [online] Available at: <https://www.anrows.org.au/resources/australian-governments-joint-select-committee-on-australias-family-law-system/> [Accessed 19 Jul. 2024].

²³ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Australian Government's Joint Select Committee on Australia's family law system. [online] Available at: <https://www.anrows.org.au/resources/australian-governments-joint-select-committee-on-australias-family-law-system/> [Accessed 19 Jul. 2024].

the other party does not attend and the matter is adjourned. This prolongs the court process, significantly adding to a victim survivor's financial burden.

Victim survivors should be able to access timely and affordable legal information, advice and representation when they need it, throughout FVIO and family law processes. Our members highlighted the importance of early access to legal information, to ensure that victim survivors are aware of their rights and that they can make informed choices. Access to legal representation to ensure these rights are upheld throughout all legal processes is essential. Members also raised examples of inequity across all points of the legal system, with victim survivors being burdened by the responsibility of needing to provide proof of family violence, and perpetrators often being taken at their word.

In addition to legal representation for victim survivors, it is essential that both parties understand the requirements of all court orders, and the implications of breaching them. For some victim survivors, including those who do not speak English as their first language, people with poor literacy or people with disabilities, not understanding the terms and conditions of the order(s) can result in inadvertent breaches. This can particularly be the case when parties have FVIO and parenting orders across court jurisdictions that may contradict each other. It also provides another opportunity for systems abuse, where perpetrators can manipulate a victim survivor into breaching, and then report that breach. Access to legal information can help prevent unintended breaches of conditions and associated systems abuse.

Recommendation

- 13) Legal services, including women's legal centres and community legal centres, are appropriately resourced to be able to provide timely legal advice, assistance and representation to all victims of family violence at points of engagement with the state and federal court system across their legal journey

The need for specialist family violence supports to be available prior, during and after legal proceedings

As noted in a Women's Legal Services Australia submission²⁴ approximately 80 per cent of parenting matters lodged at the FCFCOA involve a history of allegations of family violence. As family violence is a pattern of behavior based in coercive control that often occurs over an extended period, the impact of these behaviors on a victim survivor is cumulative. Any circumstance that leads a perpetrator to believe they are losing control has the potential to lead to an escalation in family violence and negatively impact the safety of victim survivors. The evidence-based risk factors in MARAM²⁵ outline that certain situations including court matters, and specifically family court, can increase the risk of family violence escalating in a very short timeframe.

²⁴ Box (n.d.). Women's Legal Services Australia * PO. [online] Available at: <https://www.wlsa.org.au/wp-content/uploads/2023/02/WLSA-submission-Family-Law-Amendment-Federal-Family-Violence-Orders-Bill-2021-June-2021.pdf> [Accessed 31 Jul. 2024].

²⁵ Victorian Government (2021). Evidence-based risk factors and the MARAM risk assessment tools | Victorian Government. [online] [www.vic.gov.au](https://www.vic.gov.au/maram-practice-guides-foundation-knowledge-guide/evidence-based-risk-factors-and-maram-risk). Available at: <https://www.vic.gov.au/maram-practice-guides-foundation-knowledge-guide/evidence-based-risk-factors-and-maram-risk>.

The specialist family violence system in Victoria provides a range of supports to victim survivors of family violence to increase their safety and assist them to leave violent situations and establish stability. This assistance is primarily crisis focused, with funding for most programs supporting victim survivors in the first weeks and months after either a family violence incident or the decision to leave the relationship.

Victim survivors should also have access to trauma-informed, specialist family violence services as required as they recover from family violence. This should not be limited to support at the point of crisis, recognising that recovery is not linear and that family violence risk changes and escalates at different points including engagement with courts.

Family law matters can take place over many years, well after crisis supports have ceased. An ANROWS 2022 report²⁶ found that the average duration of family law matters was approximately 54 months, and that litigation in a substantial proportion of cases extended beyond three years, with nearly one third of cases taking between five and nine years and a small but not insignificant proportion taking place over 12 or more years (6 per cent). This leaves victim survivors to navigate the complex justice system without specialist family violence support. The process of going to court can also re-traumatise victim survivors as they relive their experiences. There should be an option for specialist family violence services to provide episodic support for victim survivors, at points of key risk for escalation or re-traumatisation, such as going to court.

Recommendation

- 14) Specialist family violence services to be funded to provide case management support to victim survivors beyond the initial crisis and to be able to provide episodic support at points of known increased risk, including court processes

²⁶ ANROWS - Australia's National Research Organisation for Women's Safety. (n.d.). Compliance with and enforcement of family law parenting orders: Final report. [online] Available at: <https://www.anrows.org.au/publication/compliance-with-and-enforcement-of-family-law-parenting-orders-final-report/>.

Recommendation summary

- 1) The adoption of a national, consistent definition of family violence and nationally consistent principles for family violence related legislation
- 2) Family violence interventions orders, by default, to be national with breaches investigated in the state in which they are reported
- 3) The FCFCOA implements its authority under the *Family Law Amendments Act (Information Sharing) (2023)* as soon as possible, to ensure court staff seek out and consider current and past FVIOs prior to handing down parenting orders
- 4) Wherever possible parenting orders should uphold FVIOs, recognising that perpetrators taking out FVIOs or cross applications is a common form of systems abuse and needs to be taken into consideration
- 5) Provide training and support to all magistrates to increase awareness and utilisation of specific conditions on FVIOs as well as varying parenting orders when existing parenting orders are in conflict with FVIOs being put in place to enhance the safety of children
- 6) Ensure that police are aware of their authority and responsibility to respond to breaches of FVIOs, whether or not there are existing parenting orders in place
- 7) Investigate a more streamlined process for breaches of parenting orders to be reported and rectified to avoid having to repeatedly attend court – an expensive and time-consuming process for all involved, including the court
- 8) The relevant recommendations of the Victorian Victims of Crime Commissioner’s report are considered where appropriate to make court systems, safer, fairer and client centred
- 9) The recommendations of the ANROWS submission to the Joint Select Committee on Australia's Family Law System are considered
- 10) Resourcing is made available for FCFCOA to provide legal information and support for victim survivors:
 - a. To understand and navigate the court process, including information prior to the court date about what to expect, where to go on the day, family advocacy and support services staff, applicant workers etc who can provide support
 - b. With practical assistance such as referrals to specialist family violence services, housing or legal services where required
 - c. To help litigants understand the conditions of orders and consequences of breaches

- 11) The FCFCOA is resourced appropriately to adopt a family violence, trauma informed lens, including:
- a. Full implementation of the *Federal Circuit and Family Court of Australia Family Violence Plan 2023-26* and adoption of *Family Violence Best Practice Principles*
 - b. All court staff to be appropriately trained to recognise, understand and respond appropriately to family violence, including making referrals for support that allows victim survivors to continue their recovery
 - c. Victim survivors to have access to legal information, advice and representation at all points of the intervention order and family law process
 - d. Victim survivors to be able to utilise the appropriate access options to support their physical and psychological safety including, but not limited to, separate entrances and waiting spaces and remote access
 - e. Victim survivors to be able to access family advocacy and support services (FASS)
 - f. Strengthening understanding of the unique issues across communities in relation to family violence and to use this information to inform practice and procedures
- 12) Ensure the additional powers and responsibilities provided under the *Family Law Amendment Act (2023)* and the *Family Law Amendment (Information Sharing) Act (2023)* are socialised and implemented. This will require resourcing including, but not limited to:
- a. System development
 - b. Training
 - c. Development of reference materials and guidelines
 - d. Support for staff to implement practice change
- 13) Legal services, including women's legal centres and community legal centres, are appropriately resourced to be able to provide timely legal advice, assistance and representation to all victims of family violence at points of engagement with the state and federal court system across their legal journey
- 14) Specialist family violence services to be funded to provide case management support to victim survivors beyond the initial crisis and to be able to provide episodic support at points of known increased risk, including court processes