



**SOUTH-EAST MONASH  
LEGAL SERVICE INC.**

ADVOCACY COMMUNITY EMPATHY



## SUBMISSION

Prepared by South-East Monash Legal Service Inc. for the

**Standing Committee on Social Policy and Legal Affairs  
In relation to the Inquiry into**

### **Family Violence Orders**

Date submitted: 02 August 2024

**Head Office**

A: 5 Osborne Avenue, Springvale  
Vic 3171  
P: (03) 9545 7400  
PO Box 312, Springvale, VIC 3171  
W: [smls.com.au](http://smls.com.au)

**Branch Office**

A: Suite 1, Level 2, 64 Victor Crescent, Narre Warren  
Vic 3805  
P: (03) 9038 8002  
ABN: 96 206 448 228 | Reg: A0013997D



## Our organisation

Established in 1973, South-East Monash Legal Service ('**SMLS**') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia. SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court, Federal and Family Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit and Family Court, and Victims of Crime Assistance Tribunal.

SMLS has one of the oldest clinical legal education programs in Australia, in partnership with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS provides integrated, wrap around services through our Support Connect Integrated Program, where clients receive legal assistance, assistance from social workers and financial counselling through a partnership with Good Shepherd. SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

## SMLS and matters involving family and domestic violence

SMLS continues to see an urgent need to change social norms on family, domestic and sexual violence ('**FDSV**'). Women who have experienced FDSV are frequently stigmatised and are subjected to 'victim blaming'. These attitudes appear to be culturally entrenched and can create significant hurdles to a woman's willingness and ability to seek help.

A recent 'police blitz' aimed at early family violence detection (which involved proactive checks on known offenders and victims) in five Victorian municipalities (including SMLS catchments areas Cardinia, Casey and Greater Dandenong) accounted for more than 70 per cent of family violence incidents across south-east Melbourne.

*Casey, which includes the suburbs of Cranbourne, Berwick and Narre Warren, had the highest incidence of family violence-related offences in Victoria's 79 local government areas in the year to March 2024, with 5564 incidents.<sup>1</sup>*

---

<sup>1</sup> Wendy Tuohy, 'The true picture of Melbourne's family violence: 2700 arrests in five months' *The Age* (Online) 4 July 2024 <<https://www.theage.com.au/national/victoria/the-true-picture-of-melbourne-s-family-violence-2700-arrests-in-five-months-20240703-p5jqoc.html>>

SMLS is also a partner in the Victims Legal Service (VLS), a dedicated, statewide, specialist legal service for victims of crime that launched in March 2023. The scope of the current VLS is to provide free legal advice and support to people who have suffered injury or loss because of a violent crime, including sexual offences, and who need help to obtain financial assistance through the Victims of Crime Assistance Tribunal (VOCAT) or compensation from the person who committed the crime through a *Restitution and Compensation Order under the Sentencing Act 1991 (Vic)*. We note that these programs will change when the Financial Assistance Scheme (FAS) comes into operation.

We also deliver community legal education on healthy relationships with a focus on young people from a CaLD background with various schools and youth services across the southeast. We provide tailored legal education to various community groups and organisations across the region, focussing on women and gender diverse people on temporary visas.

SMLS maintains extensive knowledge of the unique needs and experiences of victim survivors and significant expertise in issues such as trauma-informed approaches, and the relevant legal expertise to guide them through complex legal systems. Legal systems are frequently retraumatising, but they can also be rehabilitative.

SMLS has made submissions to several family law inquiries that have made recommendations responding to the fragmentation of the family law and family violence legal systems and its impact on families.<sup>2</sup> Our lawyers provide duty lawyer services at the Dandenong Magistrates court every day, and the majority of the clients we assist at court also have family law issues. We assist both victim survivors of family violence as well as person(s) using violence. Cross-jurisdictional legal issues can present huge challenges for families, especially where they may be experiencing disadvantage.

---

<sup>2</sup> Springvale Monash Legal Service Joint Select Committee on Australia's Family Law System, Submission to the Australian Law Reform Commission Review of the Family Law System Issues Paper (November 2018)

and Submission to the Australian Law Reform Commission Review of the Family Law System Discussion Paper (May 2018), Submission to the Parliamentary Inquiry into a better family law system to support and protect those affected by family violence (2017)

## Acknowledgement of Country

SMLS wishes to acknowledge the traditional custodians of this lands upon which our office are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging. We acknowledge the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

## Terms of Reference and Scope of Submission

SMLS makes this submission in response to the Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders and the corresponding Terms of Reference. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

### Terms of Reference

1. The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.
2. The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:
  - a. the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO
  - b. the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO
  - c. the availability of wrap-around support services and security for victims of violence.
3. How FVOs could be more accessible for victims of violence going through the family law system, including but not limited to:
  - a. making it easier to apply for and enforce an FVO
  - b. co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia
  - c. the legal and non-legal support services required to promote early identification of and response to family violence.
4. Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

### Acronyms

SMLS	South-East Monash Legal Service Inc.
CaLD	Culturally and linguistically diverse
CLC	Community legal centre
FVIO	Family Violence Intervention Order
IVO	Intervention Order
ISSA	Integrated Services for Survivor Advocacy
MDC	Multi-Disciplinary Centre
NESB	Non-English speaking background
VLRC	Victorian Law Reform Commission
ALRC	Australian Law Reform Commission

## Terminology

### Perpetrators and Users of Violence

'Perpetrator' is adopted in this submission for the sake of consistency. SMLS acknowledges that the terms 'Perpetrators' and 'Users of Violence' are complex, in particular SMLS does not recommend using these terms for young people who use violence in relationships, at home or against family members nor for women who use force or violence in the context of being victim-survivors of family violence. SMLS acknowledges that many young people who use violence in a relationship or at home have themselves experienced family violence. The service and justice system often do not recognise or address these experiences, trauma and used behaviours.

***\*Please note, names have been changed in all case studies provided, to protect client confidentiality.***

## Introduction

We thank the Standing Committee on Social Policy and Legal Affairs and Attorney-General, the Hon Mark Dreyfus KC MP, for the opportunity to respond to the Inquiry into family violence orders. We welcome the ongoing commitment to review the family law system, prevent family violence and protect victim survivors. We have based these submissions on our clients' and lawyers' experiences.

### **1. The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.**

Family law court proceedings are typically adversarial in nature and heighten the risk of family and domestic violence for victim survivors. More than 80 per cent of cases in the family court involve allegations of family violence.<sup>3</sup> Research has shown that domestic and family violence risks are at the highest during separation, and even more so for families involved in family court proceedings.<sup>4</sup> For many of our clients going through family court proceedings they are met with the very real risk and additional stress of an escalation in family violence. This risk can take many forms, including the risk of aggressive or physical behaviour, but also invisible forms of violence such as economic abuse, coercive control, and systems abuse of court processes by perpetrators. False allegations are frequently used as a tactic to perpetuate further family and domestic violence against victim survivors. Misidentification of victim survivors is a concerning example of this type of family violence and is disproportionately seen in marginalised cohorts, including those who are on temporary visas, CaLD, Aboriginal and Torres Strait Islander people, and those with disabilities. Misidentification of a victim survivor as a perpetrator can have devastating impacts for those on temporary visas as their application can be referred to Visa Applicant Character Consideration Unit (VACCU) to consider whether a visa holder should have their visa cancelled or a visa applicant should have their application refused, based on their character.<sup>5</sup>

We have also had instances of FVIOs being used in place of parenting arrangements, where one parent has applied for a FVIO against the other parent when parenting matters are not before the courts and there are no arrangements in place, but the FVIO is used as a tool to try keep children away from the other parent.

We have previously voiced our concerns surrounding the correlation between family law matters and family violence in our response to the Royal Commission into Family Violence:

---

<sup>3</sup> Federal Circuit and Family Court of Australia, 'Media Release: Federal Circuit and Family Court of Australia launches major family law reform to improve safety and support for children and families' 5 December 2022 <<https://www.fccoa.gov.au/news-and-media-centre/media-releases/mr051222>>

See also ANROWS National risk assessment principles for family and domestic violence And Victoria's Multi-Agency Risk Assessment and Management Framework (MARAM).

<sup>4</sup> ANROWS, 'Family violence triage in family courts: Safety, efficacy and benefit' <<https://www.anrows.org.au/project/family-violence-triage-in-family-courts-safety-efficacy-and-benefit/>>

<sup>5</sup> See Safelanding Project for more details <https://www.northernclc.org.au/safe-landing>

*We acknowledge that family violence does not exist in isolation. From the work that we undertake, we find that there are intersecting factors which affect individuals and communities, all of which may contribute to violence. For example, this can include the imbalance of power in relationships, mental health issues and drug and/or alcohol issues as well as income stress. We submit that there is a strong correlation between a victim obtaining an IVO and the other party's conduct in their family law matter. This is particularly evident where family violence has been present for some time. For example, in one of our more complex litigation matters regarding parenting orders in the Federal Circuit Court, the perpetrator increased the intensity of threats against the victim, including death threats once litigation was underway and the perpetrator was not content with the interim orders made by the court.<sup>6</sup>*

Magistrates often have a lack of understanding of family violence and how it interacts with family law court proceedings. There is often a failure for the justice system to respond to risks, particularly when it is a victim-initiated FVIO. Our experience has been that magistrates at times appear to minimise self-initiated FVIOs compared to police applications and are less likely to grant orders. SMLS continues to see an inadequate understanding of the dynamics of family violence in comments and decisions made in court. These comments and decisions are often very harmful to victim survivors of family violence.

There is a myriad of reasons why a victim survivor may decide to remain living with or return to a perpetrator of family violence despite ongoing abuse. Despite this, judicial officers and family law professionals still dismiss family violence concerns because a victim survivor returned to a relationship with a perpetrator and partake in 'victim blaming' language. Police are also seen to avoid involvement in FVIOs where there are family law matters on foot as they misidentify some forms of family violence matters as a civil/family law issue.

*Some magistrates do not seem to have a good understanding of DFV dynamics and the seriousness of harm to women and children. Also, concerns about some of the Family Reports and the lack of understanding of DFV dynamics, and the impact on children recommended to spend substantial periods of time with the perpetrator. The current family law system allows controlling behaviours to be displayed in relation to child access. Often perpetrators are using a dual system to seek revenge, retribution.<sup>7</sup>*

### *Case Study - Steph*

*Our client 'Steph' was seeking 6 intervention orders from family and community members who have threatened her with forced marriage and death threats. On two occasions a magistrate was dismissive of Steph's experiences and concerns: minimising the client's concerns as quote 'a cultural' issue. This client was left feeling invalidated and let down by the process. Our lawyer was concerned with the magistrate's views of what they considered acceptable or 'cultural' differences and persisted on putting forward Steph's real and valid fears of harm.*

---

<sup>6</sup> SMLS, 'Response to Royal Commission into Family Violence', <<https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-Royal-Commission-Submission.pdf>>

<sup>7</sup> Taylor, A., Ibrahim, N., Lovatt, H., Wakefield, S., Cheyne, N., & Finn, K. *Domestic and family violence protection orders in Australia: an investigation of information-sharing and enforcement with a focus on interstate orders: Final report* (ANROWS Horizons, 07/2017). Sydney: ANROWS.



**Recommendation:**

We recommend that relevant regulatory bodies such as the Victorian Legal Services Board, in consultation with specialist family violence organisations develop and deliver a mandatory qualification/certification for family law professionals in addition to culturally appropriate responses to family violence.<sup>8</sup>

2. **The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:**
  - a. **the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO**
  - b. **the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO**
  - c. **the availability of wrap-around support services and security for victims of violence.**

Family court and family law order proceedings can pose significant challenges for victim survivors of family violence. Many victim survivors are primary caregivers for their children, managing responsibilities such as school drop-offs childcare and work commitments. Taking time off work to attend court can result in financial strain as they often exhaust personal and annual leave for lengthy court proceedings. Financial dependence on the perpetrator further limits their ability to fund court costs, putting them at a disadvantage. This can be a factor in their decision to stay in a violent relationship. These issues are further exasperated by vexatious litigants who misuse the family law system, prolonging legal processes and perpetuating family violence tactics. There is a clear need for greater acknowledgment and addressing of vexatious litigation within family law, recognising its impacts on victim survivors and their families.

There needs to be a continuing sensitivity to any unique experiences of women from culturally and linguistically diverse backgrounds. We see an ongoing need for services to be alert to these cultural differences so that women receive support that is tailored and effective. We also have concerns regarding the limited accessibility to services for women and children based in rural and remote areas. We see an urgent need to develop innovative solutions to improve accessibility.

The challenges faced by victim survivors navigating the family law system and FVIOs are multifaceted and impactful. We refer to two recent research reports 'Justice at Home' which looks at the *'impact of the use of remote technology on participation and equitable access to justice, specifically within the context of victims/survivors of family violence participating remotely in family violence intervention order hearings'*<sup>9</sup> and 'Barriers to Access' which *'explores the barriers experienced by migrant and refugee*

---

<sup>8</sup> As previously recommended in our submission to the Joint Select Committee on Australia's Family Law System

<sup>9</sup> Tambasco, C., McKenna, T., Burdon-Smith, L., Smith, J., & Fahmy, M., 'Justice at Home: An exploration of family violence victims-survivors' experience of remote hearings for family violence intervention orders' (Research Report) Northern Community Legal Centre (2024), < <https://www.northernclc.org.au/justice-at-home>>

women when using online forms to apply for family violence intervention orders (FVIOs)<sup>10</sup>. These reports provide a thorough analysis of the challenges victim survivors face using remote technology in FVIO hearings and the barriers that migrant and refugee women facing using these online forms. Many of these challenges detailed in the reports mirror the experiences of our clients, including the following:

- a. Language barriers present a significant hurdle, as FVIO application forms are in complex legal English, making them difficult to understand for many. For non-English-speaking clients, additional barriers arise, including the lack of IVO application forms in other languages other than English with no translation options available.
  - i. The shortage of interpreters, including Auslan interpreters, further complicates matters, especially when rare languages are involved. If you do not speak or read English, it is nearly impossible to interact with the criminal justice system without further assistance.
  - ii. The complex terms must be in plain English, and consideration must be made for those that are deaf, blind or have other disabilities.
  - iii. An added complexity is that there are often no direct translations for many of the complex legal words into other languages, as many of these legal concepts may be foreign to other countries or cultures.
  - iv. This not only applies to information for victim survivors but also for people who may use violence, legislation explanatory statements must be made clear in plain English, as well as translated in other languages to educate people of their rights and responsibilities.
  - v. Information that is made available must also be culturally informed and adapted to what each community needs.
  - vi. Resourcing grass roots organisations to help in this information and education sharing is critical as they are best suited to adapt the resources to suit their local communities.
- b. The online interface for FVIO adds further difficulty, with concerns over safety risks such as potential tech abuse and the need for secure devices for clients.
- c. Pre-court information, including options like attending remotely or Early Resolution Services (ERS), are not widely known, leaving many unaware of available resources and processes.
- d. Clients often find themselves passed between different services without clear responsibility, compounding the stress of having to repeatedly recount their experiences of violence.
- e. Accessing appointments or assistance with online forms can be challenging, particularly for those without support from practitioners who are already burdened with heavy workloads. This increases their stress levels, leading some to disengage from the process altogether due to its complexity and frustration.
- f. Many clients are unaware of the two-step application process, leading to missed opportunities for preparation.
- g. There is a fear among some clients that their credibility and seriousness may be undermined in court, particularly in remote hearings where personal presence and demeanour may not be fully conveyed to a magistrate.

---

<sup>10</sup> Tambasco, C., Hammond, K., Smith, J., Bottriell, N., McKenna, T., Burdon-Smith, L., & Fahmy, M. . 'Barriers to Access: Migrant and refugee women's experiences of the online family violence intervention order process.' Northern Community Legal Centre and the Australian Muslim Women's Centre for Human Rights, (2024) <<https://www.northernclc.org.au/justice-barriers-research-project>>

- h. Technical issues during online proceedings, such as long waiting periods, exposure to (often traumatising) unrelated court matters, and difficulties in communicating with lawyers and interpreters, add to the distress and frustration experienced by clients.
- i. Inconsistencies in remote participation protocols contribute to a lack of trauma-informed and confidential proceedings.
- j. Issues such as magistrates requiring cameras on, and insufficient communication support for interpreters, highlight systemic challenges that undermine the effectiveness and fairness of the family law system for victim survivors.

If there are current family law orders and an FVIO is in place, the family law orders will override the FVIO conditions. This can have the unintended risk of exposing victim survivors to further family violence. Our clients often experience further family violence from the person(s) using violence where there are exceptions in the FVIO for any family law orders. The person(s) using violence continue to commit family violence through threatening messages. The clients report back that the police would not enforce the FVIO despite the condition stating that the perpetrator can do anything permitted under the family law orders *only on the condition they do not commit family violence*. The police response to our clients in these situations is “it is a family law matter now”. This escalates and heightens the risk for victim survivors, they may also be retraumatised, may not commence, avoid or discontinue proceedings, or they may agree to consent orders that are unsafe or unwanted, for fear of retaliation by the perpetrator.

In our experience, there is a lack of availability of wrap-around services and security for victim survivors of family violence during court processes, particularly those appearing remotely. Funding is limited and is not integrated to deliver a holistic service that can provide collaborative and wrap around support for victim survivors. Victim survivors are often passed around and made to contact different services seeking assistance with their legal and non-legal issues. In our Response to the Royal Commission into Family Violence we outlined the complexities that victim survivors face:

*In addition, parties navigate a complex court system, often having to attend court appearances in multiple jurisdictions. It is our experience that violence leaves victims confused and overwhelmed, and their anxiety is exacerbated by the need to attend multiple services in order to address both legal and non-legal issues even before they attend the initial court hearing for an IVO. In her 2010 report, Laing established that there was a lack of coordination between State and Federal legal jurisdictions.<sup>11</sup> That research found that: In order to protect themselves and their children, the women found that they had to navigate a fragmented and uncoordinated service system, marked by delays and barriers to accessing accurate information.<sup>12 13</sup>*

Our lawyers report that the remote witness facility in some Victorian courts is a positive option for victim survivors who are not comfortable being behind a wall in Court with the Respondent on the other side,

---

<sup>11</sup> L Laing, No Way To Live: Women's Experience Of Negotiating The Family Law System In The Context Of Domestic Violence. Faculty of Social Work and Education, University of Sydney, Sydney, 2010 p.7

<sup>12</sup> L Laing, No Way To Live: Women's Experience Of Negotiating The Family Law System In The Context Of Domestic Violence. Faculty of Social Work and Education, University of Sydney, Sydney, 2010 p.10

<sup>13</sup> SMLS, 'Response to Royal Commission into Family Violence' <<https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-Royal-Commission-Submission.pdf>>

as this can be traumatising and cause them anxiety and distress. However, unfortunately, the remote witness facility is not available at all courts including many regional courts.

**Recommendation:**

We call for support and funding of integrated legal services (including social workers and financial counsellors) at CLCs and VLA to provide holistic support to address their legal and non-legal issues.

We recommend remote witness facilities to be made available at all courts.

**3. How FVOs could be more accessible for victims of violence going through the family law system, including but not limited to:**

- a. **making it easier to apply for and enforce an FVO**
- b. **co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia**
- c. **the legal and non-legal support services required to promote early identification of and response to family violence.**

Recent research reports such as ‘Justice at Home’<sup>14</sup> and ‘Barriers to Access’<sup>15</sup> highlight the advantages brought by technological advancements and remote FVIOs. These advancements are recognised for their potential benefits in enhancing accessibility and efficiency within the legal process, particularly for victim survivors of family violence.

1. **Reduced stress and anxiety:** Online hearings can reduce stress and anxiety for victim survivors because they can participate from a location where they feel safe, potentially avoiding direct confrontation with the perpetrator.
2. **Flexibility for caregiving:** Victim survivors can remain available to care for their children or attend to other responsibilities while participating in remote hearings. This flexibility can be crucial for those with caregiving responsibilities or disabilities.
3. **Cost Savings:** Remote hearings can reduce the costs associated with attending court, such as childcare expenses or transportation costs, thereby enhancing accessibility to the legal process.
4. **Minimised System Abuse:** By reducing the need for multiple court appearances and adjournments, remote hearings can minimise the impact of system abuse, where perpetrators may exploit delays or procedural inefficiencies.
5. **Increased Efficiency for Practitioners:** Remote hearings enable legal practitioners to manage their time more efficiently, potentially allowing them to handle more cases and see more clients.

These benefits suggest that integrating technology into the FVIO process can improve accessibility, efficiency, and the overall experience for victim survivors and legal professionals alike. It underscores

---

<sup>14</sup>Tambasco, C., McKenna, T., Burdon-Smith, L., Smith, J., & Fahmy, M., , ‘Justice at Home: An exploration of family violence victims-survivors’ experience of remote hearings for family violence intervention orders’ (Research Report) Northern Community Legal Centre (2024) < <https://www.northernclc.org.au/justice-at-home>>

<sup>15</sup> Tambasco, C., Hammond, K., Smith, J., Bottrill, N., McKenna, T., Burdon-Smith, L., & Fahmy, M. . ‘Barriers to Access: Migrant and refugee women’s experiences of the online family violence intervention order process.’ Northern Community Legal Centre and the Australian Muslim Women’s Centre for Human Rights, (2024) < <https://www.northernclc.org.au/justice-barriers-research-project>>

the potential of technology to mitigate some of the challenges traditionally associated with legal proceedings, particularly in sensitive cases like family violence.

We support the findings and recommendations of the ‘Justice at Home’ and ‘Barriers to Access’<sup>16</sup> Reports aimed at improving accessibility and processes for victim survivors, which include:

1. Standardising processes and practices for FVIO across all courts.
2. Additional resourcing for Family Violence duty lawyer services.
3. Providing approximate scheduled times for hearings.
4. Introducing virtual waiting rooms.
5. Allowing victim survivors the option to turn cameras off or access via telephone audio.
6. Positioning screens for magistrates to see victim survivors, so that perpetrators and others in court cannot view victim survivors.
7. Incorporating judicial training that includes lived experiences of victim survivors attending court.
8. Providing a direct phone number to court for use when technology fails.
9. Sending pre-court information packs to victim survivors at least 10 days before hearing dates.
10. Magistrates to allow matters to be stood down when lawyers and clients need to communicate.
11. Allowing sufficient time for interpreting or offering a preferred model where the interpreter is with the client at a secure location.
12. Review of online FVIO forms and pre-court form – and Accessibility language etc.
13. Combine application and pre-court form into one application form.
14. Courts to arrange interpreters and the Investment in reviewing quality and accessibility of interpreting services.
15. Allow and assist victim survivors to complete FVIO forms at court.
16. Additional funding for the family violence legal sector to support victim survivors applying for FVIO.

**Recommendation:**

We recommend the review and implementation of the above recommendations for improvements of the FVIO online processes to improve accessibility for victim survivors.

The IVO application form asks the Applicant to tick a box to indicate which conditions to include in the FVIO. The note indicates that the magistrate *may not* include all the conditions chosen if an order is made. The heading ‘Children’s Arrangements’ includes items asking the applicant to decide if their children’s safety will be jeopardised. The applicant is also required to acknowledge the court will require any children’s arrangements to be in writing. An affected person may not be aware the children are at risk as their understanding of the definition of ‘family violence’ may be limited. We note that this is particularly relevant for our CALD clients who may not recognise that a child is at risk as the

---

<sup>16</sup>Tambasco, C., McKenna, T., Burdon-Smith, L., Smith, J., & Fahmy, M., , ‘Justice at Home: An exploration of family violence victims-survivors’ experience of remote hearings for family violence intervention orders’ (Research Report) Northern Community Legal Centre (2024) < <https://www.northernclc.org.au/justice-at-home>>

Tambasco, C., Hammond, K., Smith, J., Bottriell, N., McKenna, T., Burdon-Smith, L., & Fahmy, M. . ‘Barriers to Access: Migrant and refugee women’s experiences of the online family violence intervention order process.’ Northern Community Legal Centre and the Australian Muslim Women’s Centre for Human Rights, (2024) <<https://www.northernclc.org.au/justice-barriers-research-project>>

respondent's conduct may not be considered 'family violence' as per legislation. Consequently, a child at risk may not be included in the FVIO application. However, we find that when the police are the applicant the children are usually included if the police have identified that there is a risk.

**Recommendation:**

We recommend removing the self-identifying risk question and leave this to be determined by the Court.<sup>17</sup>

We see an urgent need for greater information sharing and harmonisation of family law and family violence rules and procedures at a state and federal level. We note that it is too soon to comment on the recently commenced *Family Law Amendment (Information Sharing) Act 2023*.

We recommend a national family violence register and greater information sharing for sharing family law orders, intervention orders and child protection orders, and family violence risk indicators. This call for collaboration and information sharing is echoed by our colleagues in the sector including National Legal Aid and Women's Legal services Australia.<sup>18</sup>

Victim survivors should be able to rely on a family violence order across states without worrying about having to register their FVIO in each state. The current system is very state focussed, and the burden is on the victim survivor to register the order in a different state. A national database would allow police to better monitor and enforce orders interstate when perpetrators or victims leave the state. A magistrate with access to family law orders hearing an intervention order application is in a better position to make a decision regarding the children with this information readily accessible. We have made submissions to magistrates in an intervention order hearing to suspend the family law orders where a child is at risk and the magistrate has refused, often citing the reason that they do not have a copy of the parenting orders, as many clients do not bring parenting orders to court for an intervention order hearing.

**Recommendation:**

We recommend a national family violence register and greater information sharing for sharing family law orders, intervention orders, child protection orders, and family violence risk indicators

**4. Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.**

**Minimum Default Duration for FVIOs**

We note that the Victorian Government has announced new law reform including extending the minimum length of FVIO. Additionally, the VLRC will be conducting an inquiry to determine whether

<sup>17</sup> As previously recommended in our submission to the Royal Commission into Family Violence

<<https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-Royal-Commission-Submission.pdf>>

<sup>18</sup> 'Legal aid appeal for DV collaboration nationally', The Australian (Online), <<https://theaustralian.com.au/nation/politics/legal-aid-appeal-for-domestic-violence-collaboration-nationally/news-story/24f40db187926e4354e0e320f1a9d90a?btr=6371e39f739fb9b74358c6b8b0f9f762>>

there should be a minimum default duration for final FVIOs. This reform and inquiry indicate a significant effort to enhance the effectiveness and impact of FVIOs in protecting victims of family violence in Victoria. Establishing a minimum default duration for final FVIOs can offer several benefits. Overall, a minimum default duration for final FVIOs can strengthen the protective measures available to victims of family violence, providing them with a more predictable and supportive legal framework during a vulnerable time.

1. **Consistent protection:** It ensures that victim survivors receive a minimum period of protection against further violence and harassment from the perpetrator. This consistency can be crucial in providing victim survivors with a sense of security and stability and reduces the need for frequent renewals and court appearances.
2. **Support for victims:** A minimum duration allows victims sufficient time to seek support services, and begin their recovery process without the immediate threat of violence.
3. **Potential deterrent effect:** Knowing that an FVIO will last for a minimum period may act as a deterrent to perpetrators, discouraging them from further abusive behaviour during that period.
4. **Reduced administrative burden:** Having a standard minimum duration can simplify the administrative processes involved in issuing and managing FVIOs, making it clearer and more efficient for all parties involved.
5. **Emotional and psychological stability:** Victims experience greater peace of mind knowing that their legal protections are extended, which can contribute to their emotional and psychological well-being.
6. **Stability for families:** Ensures a stable and secure environment for children by maintaining consistent protection against family violence within the household.

***Recommendation:***

We recommend establishing a minimum default duration for final FVIOs and harmonisation of minimum durations across states.

**Training and Upskilling of Industry Professionals**

Those working in the industry and profession (police, magistrates, lawyers and social workers) must be routinely upskilled and educated to recognise, prevent and respond to family violence (and the intersectional complexities) in a trauma informed and culturally safe way.<sup>19</sup>

There remains an urgent need for Magistrates to be more trauma informed as well as educated on up-to-date family violence issues and concerns, particularly technology related crimes. Whilst magistrates in the specialist family violence courts have training in family violence matters, given the scale of the crisis of violence against women in Australia, all magistrates must be specially trained in family and sexual violence, given the epidemic of violence against women and children in this country.

We also recommend further education and mandatory professional development of all lawyers to better recognise and respond to family and sexual violence – ultimately that it should form part of law school

---

<sup>19</sup> SMLS and FLC (Vic), Joint Submission ‘Submission to the Inquiry into Consent Laws’, <[https://assets.nationbuilder.com/flc/pages/715/attachments/original/1684207404/Submission\\_to\\_the\\_Inquiry\\_into\\_consent\\_laws\\_\(Federation\\_and\\_SMLS\)\\_FINAL.pdf?1684207404](https://assets.nationbuilder.com/flc/pages/715/attachments/original/1684207404/Submission_to_the_Inquiry_into_consent_laws_(Federation_and_SMLS)_FINAL.pdf?1684207404)>

curriculum. These issues are not occurring in a vacuum and the legal profession is well placed to recognise and assist in a trauma informed way, contributing to cultural and societal change. At a minimum, lawyers that appear in family and sexual violence matters should have training to provide assistance in a culturally safe and trauma informed manner.

Police responses to reports of family violence are inconsistent and can be damaging and retraumatising for a victim survivor. To enhance a victim survivors' access to justice and their experience in obtaining and enforcing a FVIO a review of police processes and responses is needed.

Many police officers lack adequate training in the complexities of family violence and often fail to recognise its various forms. This includes not fully understanding coercive control dynamics, such as instances where a parent may withhold a child from the other parent, which are integral parts of the broader pattern of family violence. There is a critical need for enhanced education on family violence, along with training in anti-racism and cultural awareness, to ensure officers are better equipped to respond effectively and sensitively to these situations.

Our Safe-landing Project, in collaboration with Northern Community Legal Centre, supports victim survivors of family violence on temporary visas. We restate our experience and reaffirm our recommendations including the following:

*Recommendation: Victoria Police should not make cross-applications for Family Violence Intervention Orders as a substitute for using an interpreter and conducting a culturally responsive investigation.*

*Police officers' inability to recognise different forms of family violence that occur in different cultural contexts leads to victims/survivors being misidentified as the perpetrator of family violence. Without cultural competency and a nuanced understanding of family violence dynamics, police rely on stereotypes and subsequently distinct cultural forms of family violence are overlooked.*

*Recommendation: Comprehensive family violence training be provided to Victoria police that come into contact with victims/survivors, regarding complex forms of family violence including dowry abuse, forced marriage, female genital mutilation, trafficking and servitude, and reproductive coercion.*

*When Victorian police complete a family violence risk assessment, they are required to ask the AFM "Is your Australian residency dependent on the respondent?" This information is crucial to understanding whether visa abuse may be occurring. While it is promising that this is a mandatory question at the risk assessment stage, we are concerned that this isn't consistently leading to an investigation of visa abuse and ongoing support for a Family Violence Intervention Order. Our clients have experienced police withdrawing Family Violence Intervention Order applications that list them as the AFM if the finalisation of the intervention order hearing has been delayed and there have not been any breaches of the interim Family Violence Intervention Order. Police are failing to conduct a risk assessment, including assessment of current or future visa abuse risk, prior to withdrawing their application. Victim/survivors are left without the protection of a Family Violence Intervention Order and face increased challenges in applying for their own Family Violence Intervention Order as the court considers police withdrawal as evidence of no risk. Victim/survivors then face increased challenges when accessing the family violence provisions of the Migration Regulations 1994, due to a lack of judicial evidence, and are often forced back into unsafe relationships due to the risk of removal from Australia.*



We have had some clients advise us that that when they have made a report to police, the police have taken no action or have told the victim to apply for their own intervention order as there are no 'immediate safety concerns'. Clients are left feeling disappointed by this as they often want/need the police to apply for an FVIO on their behalf. Clients often feel scared to apply for an FVIO on their own as they do not know whether they will be successful, whether they will be believed or how the other party will react to them applying for an intervention order.

Reporting to police at a police station is not always an option and there must be supported avenues for reporting through other means. We have seen one of the most successful ways of reporting safely is having co-location of services such as legal advice available at family violence services, maternal child health services, hospitals, schools, courts and SECASA and doctors' offices. Options for online reporting must also be available.

We see a need for specialised reporting in multi-disciplinary centres with social workers working alongside police officers. Our lawyers' experience is that often police officers do not look at victims holistically and they may not have the skills to get the right information out of clients or the skills to create a safe place so that clients feel comfortable making a report. Specialised teams working with social workers and in multidisciplinary centres can help build rapport and trust with victim survivors and can be a key step in helping clients feel comfortable in reporting to police. Having this wraparound service also ensures that if there are other support services that a victim may need, then they can be referred onto their local community legal centre or support service which can be beneficial for the client to feel heard and validated and empowered to take the next steps they need to.

***Recommendation:***

We recommend:

Upskilling and further training and education of police, magistrates, lawyers and social workers to recognise, prevent and respond to family violence in a trauma informed and culturally safe way.

Comprehensive family violence training be provided to Victoria police that come into contact with victims/survivors, regarding complex forms of family violence including dowry abuse, forced marriage, female genital mutilation, trafficking and servitude, and reproductive coercion.

Victoria Police should not make cross-applications for Family Violence Intervention Orders as a substitute for using an interpreter and conducting a culturally responsive investigation.

Funding of wraparound service provision via specialised reporting in multi-disciplinary centres with social workers working alongside police officers.

**Availability of Quality Interpreting Services**

Adequate funding, training and resourcing is needed to recruit interpreters, particularly of First Nations languages, however careful consideration must be placed in why it is difficult to attract interpreters in the first place, including the distrust of a system which has contributed to the ongoing harm experienced by First Nations people. We see the need for further training of interpreters in basic legal

concepts, particularly concepts surrounding family and sexual violence and perhaps the need for specialist accredited interpreters. We support VLRC Recommendation 61 for a review of language service arrangements, including investing in the training of and extending the pool of interpreters dealing with FDSV.<sup>20</sup>

We have seen an occasional issue with interpreters accepting a ‘job’ when it is not the language they are trained to interpret. This can have profound consequences, including contributing to the over-representation of First Nations people in the criminal justice system.<sup>21</sup>

*Delayed access to an interpreter can also leave Aboriginal women in particular in vulnerable situations. Caitlin Weatherby-Fell, the CEO of the Top End Women's Legal Service, says delays in hearing cases due to interpreter shortages can be particularly dangerous for women who experience domestic, family and sexual violence.<sup>22</sup>*

We have also had reports from our lawyers of interpreters struggling to convey what family and sexual violence is, refusal to use precise language, or misinterpret or skip over important legal concepts, including marital rape. Often, we only notice these issues if a relative has overheard the interpretation and reported back to us or if our own lawyers can understand the client’s native language and have noticed inconsistencies in what is being translated. Having a highly skilled interpreter contributes to a more positive experience for victim/survivors.

***Recommendation:***

We recommend adequate funding, training and resourcing of interpreters to improve accessibility to family law and family violence court procedures

**Funding of Community Legal Centres**

CLCs such as SMLS are instrumental in providing holistic, integrated support needed for victim survivors of family violence. A recent independent review of the National Legal Assistance Partnership (NLAP), which provides Federal and State and Territory funding for Legal Aid Commissions, Community Legal Centres, and Aboriginal and Torres Strait Islander Legal Services has found that

---

<sup>20</sup> VLRC Report, ‘Improving Justice System Response to sex Offences Report September 2021’ <<https://www.lawreform.vic.gov.au/project/improving-the-response-of-the-justice-system-to-sexual-offences/>>

<sup>21</sup> Kristina Kukulja, ‘Justice, but not in my language: Aboriginal interpreter shortage in NT courts’, ABC Listen, 9 January 2024 <<https://www.abc.net.au/listen/programs/lawreport/aboriginal-interpreters-/102961146>>

ABC News, Kristina Kukulja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

<sup>22</sup> Kristina Kukulja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ ABC News, 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

current levels of funding are inadequate and insufficient to meet Australia's legal assistance needs.<sup>23</sup> We have signed on to the joint statement from the Victim Legal Service providers in Victoria calling for continued and expanded funding of the VLS. A lack of full funding is resulting in CLCs having to turn away vulnerable clients, unable to cope with the demand. Along with the CLC sector across Australia we call for urgent Government funding of community legal centres to provide legal advice and assistance to victim survivors of family violence.<sup>24</sup>

There is an urgent need for further funding and resourcing of community legal centres to be able to continue to provide specialist legal advice and representation in family violence matters. Across the sector, centres are facing a critical breaking point of trying to service as many clients as possible and having to turn away vulnerable people.<sup>25</sup> Family and sexual assault lawyers are particularly susceptible to vicarious trauma and burnout, and this is turning many away from the specialty.<sup>26</sup> Our lawyers on the duty lawyer lists dealing with FVIO are dealing with such a great demand for advice that they are

---

<sup>23</sup> Katie Wand, 'Funding Model for legal assistance inadequate, independent review finds' *FCLC*, 30 May 2024, <[https://www.fclc.org.au/nlap\\_report](https://www.fclc.org.au/nlap_report)>

Georgia Roberts, 'Legal service funding can't meet Australia's need, independent review finds' *ABC News* (online), 29 May 2024 <<https://www.abc.net.au/news/2024-05-29/review-of-legal-services/103903398>>

<sup>24</sup> Community Legal Centres Australia, 'Media release: Taking gendered violence seriously means funding services that keep women safe' (Media Release: 30 April 2024) <<https://clcs.org.au/media-release-gendered-violence/>>

Giovanna Torre, National Indigenous Times NIT 'Funding to tackle family and domestic violence welcome, but falls short' 1 May 2024, <<https://nit.com.au/01-05-2024/11146/funding-to-tackle-family-and-domestic-violence-welcome-but-falls-short>>

Dechlan Brennan, 'Djirra criticises Victorian budget for "failure" to invest in Indigenous women and children's safety', *National Indigenous Times NIT* (Online) 13 May 2024 <<https://nit.com.au/13-05-2024/11361/djirra-criticises-victorian-budget-for-failure-to-invest-in-indigenous-women-and-childrens-safety>>

<sup>25</sup> Amy Dale, 'The time to act is now': call for urgent funding to address violence against women' *LSJ Online* 30 April 2024 <<https://lsj.com.au/articles/the-time-to-act-is-now-call-for-urgent-funding-to-address-violence-against-women/>>

Nino Bucci, 'National Legal Aid calls for \$300m funding increase to keep Australian women safe' *The Guardian*, 30 April 2024 <<https://www.theguardian.com/australia-news/2024/apr/30/national-legal-aid-calls-for-300m-funding-increase-to-keep-australian-women-safe>>

Giovanna Torre, 'Funding to tackle family and domestic violence welcome, but falls short', *National Indigenous Times NIT* (Online), 1 May 2024, <https://nit.com.au/01-05-2024/11146/funding-to-tackle-family-and-domestic-violence-welcome-but-falls-short>

Dechlan Brennan, 'Djirra criticises Victorian budget for "failure" to invest in Indigenous women and children's safety', *National Indigenous Times NIT* (Online), 13 May 2024 <<https://nit.com.au/13-05-2024/11361/djirra-criticises-victorian-budget-for-failure-to-invest-in-indigenous-women-and-childrens-safety>>

<sup>26</sup> Kate Lyons, 'I couldn't do it any more': family lawyers quit amid burnout and pain of billing DV victims', *The Guardian* (Online), 20 May 2024, <<https://www.theguardian.com/society/article/2024/may/20/i-couldnt-do-it-any-more-family-lawyers-quit-amid-burnout-and-pain-of-billing-dv-victims>>

reaching capacity every day, and are having to rush through clients on their daily list and are left feeling exhausted and like they are unable to provide the level of care and expertise they could if they were better resourced and supported to have more lawyers on the duty lists.

#### *CASE STUDY- Nancy*

*Nancy\* was referred to SMLS through our Mother's Legal Help partnership. Nancy came to Australia as a refugee, a single mother of three young children. One of the children was born with a rare medical condition. Nancy's former de-facto partner and father of the three children, Bill\*, had perpetrated extreme family violence against Nancy for many years. Nancy and Bill had also been homeless for approximately ten years, so when Nancy ended the relationship, she was living in crisis accommodation with her children. Nancy and the children's identification documents were destroyed by Bill, so Nancy could not enrol her children in school. Nancy was in significant debt as Bill fraudulently took loans out in her name and had criminal matters before the courts as a result of traffic offences including driving with an expired license. Nancy had no family support in Victoria. SMLS's family lawyers assisted Nancy in obtaining an Intervention Order, as well as advising Nancy that she could apply for Sole Parental Responsibility for her three children. Nancy was also referred to our ISSA lawyer, to assist with a VOCAT application to seek compensation for Nancy being a victim of significant family violence perpetrated by Bill. SMLS's lawyers were also able to represent Nancy in court for her upcoming criminal hearing regarding her traffic offences. Nancy was also referred to SMLS's social work team, who linked her with a financial counsellor for her debts, as well as providing her with family violence support services, connecting her with a network of mothers for social support, assisting with Centrelink forms so Nancy can obtain a Carer's benefit, and obtaining new copies of her citizenship certificate and children's birth certificates so they could be enrolled in school.*

#### ***Recommendation***

We recommend Government funding of community legal centres and VLS to provide legal advice and assistance to victim survivors of family violence.