



## **Inquiry into family violence orders**

Standing Committee on Social Policy and Legal  
Affairs

26 July 2024



## Acknowledgements

**We acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water, and community, and pay respect to Elders past and present.**

**We acknowledge the victim-survivors of domestic, family, and sexual violence who we work with and their voices and experiences which inform our advocacy for justice, equality, and safety for women.**

## About Women's Legal Services Australia

Women's Legal Services Australia (**WLSA**) is the national peak body for 13 specialist Women's Legal Services in each state and territory across Australia, including two First Nations Women's Legal Services. We provide a national voice for Women's Legal Services to influence policy and law reform, and advocate to increase access to gender-specialist, integrated legal services for women.

## About Women's Legal Services

Women's Legal Services provide high quality free legal services for women, including legal advice and representation, support services and financial counselling, community legal education, training for professionals, and engage in advocacy for policy and law reform. Some Women's Legal Services have operated for more than 40 years.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wirringa Baiya Aboriginal Women's Legal Centre NSW
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

## Contact us

For further information, please contact:

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**Women's Legal Services Australia**

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## Introduction

1. Women's Legal Services Australia (WLSA) welcomes the parliamentary inquiry into family violence orders following a referral from the Attorney-General, the Hon Mark Dreyfus KC MP. We are pleased to see the Commonwealth Government's continued interest in reviewing the family law system and its commitment to taking action to preventing family violence and abuse, and to improving the protections offered through the family law system to those affected by violence and abuse.

### **Term 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. Specialist Women's Legal Services regularly assist clients who face significantly heightened family violence risk during family court proceedings. This risk can take various forms. The adversarial nature of family law proceedings exacerbates the risk of an escalation in aggressive and violent behaviour by perpetrators of violence, predominantly males perpetrating violence against women and children. This is particularly an issue in the context of coercive control – where the perpetrator's sense of power and control is being threatened.
3. While the escalation of risk is usually well understood by the victim-survivor themselves, it can be a particular challenge for them or their legal representative to provide evidence of the true extent and gravity of the violence. This is predominantly the case when there has not been a recent incident of violence, especially physical violence.
4. The escalation of risk in family law proceedings is particularly concerning given that many victims-survivors are unrepresented in court because of the cost of private legal assistance and limited access to legal aid or assistance from a Community Legal Centre. Many self-represented victim-survivors do not know how to provide evidence to the court regarding family violence.
5. Victim-survivors have limited options to manage escalating risk, and this can result in them:
  - a) not commencing proceedings when they should
  - b) not responding to or engaging in proceedings brought by the perpetrator, and
  - c) agreeing to consent orders that are not safe for children or adult victim-survivor and/or not in the best interests of the child or the adult victim-survivor.
6. Victim-survivors may avoid engaging in the proceedings to protect themselves from harm and enhance their safety. This can have serious consequences for victim-survivors if they do not place evidence before the court regarding violence or do not fully engage in the family report process. This usually results in the Court Child Expert not having an accurate picture of the family violence and therefore making recommendations that are not safe for the children and/or victim.
7. In our experience, many self-represented victim-survivors settle matters in family dispute resolution, without the benefit of legal advice, in order to stay safe and avoid the likely escalation of violence if court proceedings continue. It is critical that legal assistance is available to help victim-survivors navigate their family law matters in order to ensure that family violence risk is appropriately assessed and addressed.
8. The experience of specialist Women's Legal Services in relation to escalation of risk is reflected in research findings which show that domestic and family violence risks are highest during



relationship separation,<sup>1</sup> and that this is elevated further for parents and children involved in Family Court, now Federal Circuit and Family Court of Australia (**FCFCoA**), disputes. For example, the 2016 review of the Victorian Common Risk Assessment Framework found that “from their experience, victim-survivors considered family law proceedings and intervention orders a critical and often overlooked indicator of family violence risk”.<sup>2</sup>

9. Research such as this has formed part of the evidence-base for family violence risk assessment tools now identifying family court proceedings as one of the risk factors of family violence escalating. For example, Victoria’s Multi-Agency Risk Assessment and Management Framework (**MARAM**) includes family court proceedings as a risk factor that can “can increase the risk of family violence escalating in a very short time frame”.<sup>3</sup> However, due to the lack of resourcing for the legal assistance sector and specialist family violence sector, serious, immediate risk must be prioritised over future, possible risk.
10. The below case study demonstrates how risk to safety often escalates post-separation, particularly through engagement in the family law system, and how legal systems are often used as a tool to perpetrate ongoing domestic and family violence against women (otherwise known as ‘systems abuse’).

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<sup>1</sup> ANROWS, ‘Family violence triage in family courts: Safety, efficacy and benefit’. Available at: [Family violence triage in family courts: Safety, efficacy and benefit - ANROWS - Australia's National Research Organisation for Women's Safety](#).

<sup>2</sup> McCulloch, J., Maher, J., Fitz-Gibbon, K., Segrave, M., Roffee, J., (2016) Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF). Prepared for the Department of Health and Human Services by the School of Social Sciences, Focus Program on Gender and Family Violence: New Frameworks in Prevention, Monash University. P. 33. Available at: [review-of-craf-final-report.pdf \(monash.edu\)](#).

<sup>3</sup> Victorian Government, ‘Evidence-based risk factors and the MARAM risk assessment tools’. Available at: [Evidence-based risk factors and the MARAM risk assessment tools | vic.gov.au \(www.vic.gov.au\)](#) Family law proceedings also recognized as a risk factor by ANROWS in National Risk Assessment Principles.

### **Sarah's story – escalation of risk in family law proceedings**

*After experiencing significant family violence from her husband David\* over many years, Sarah\* was able to escape with her children and sought legal assistance from a women's legal service for family violence orders and her family law matters – including to seek safe parenting arrangements for her children.*

*While Sarah and her children experienced a period of relative safety following her separation from David, the commencement of family law proceedings meant that the violence and abuse that David inflicted on Sarah during their relationship began again.*

*David represented himself in the proceedings and was able to abuse Federal Circuit and Family Court of Australia processes to further perpetrate violence against Sarah. Initially this involved intimidation and abusive behaviour during attendances at Court, including attempting to follow Sarah from Court.*

*Sarah was not case managed by a family violence service for the entire proceedings, because they had closed their case file with her. She therefore required ongoing social work support from the women's legal service, particularly for safety planning in advance of any in-person Court hearings to ensure that was not stalked by David.*

David [REDACTED]

[REDACTED] David filed multiple ancillary applications without merit, including multiple applications for Judicial Review, Enforcement and Contravention, and the filing of excessive derogatory Affidavit material. [REDACTED]

*This caused Sarah significant emotional distress and fear, as she was having to continuously respond to these applications. On more than one occasion she wanted to give up in order to make it all stop and was worried she would be forced to agree to arrangements that were not safe for her or her children.*

*David's abuse of the Court system and process also had significant implications for Sarah in terms of legal costs and she quickly reached the ceiling for Legal Aid funding. Despite this, she required legal assistance to make complex applications to the Court seeking for David to be deemed a vexatious litigant in order to end the abuse.*

*For Sarah, commencing family law proceedings meant a significant escalation of David's violence and abuse, which he was able to perpetrate through court systems and processes.*

*\* This case has been de-identified, including by not using their real names.*

### **Federal Circuit and Family Court of Australia response**

11. Specialist Women's Legal Services acknowledge the ongoing work being undertaken by the FCFCoA to assess and respond to family violence risk. We note the very high number of matters



in the Courts where there is an allegation of family violence (83 per cent in 2022-23), and that a significant proportion of parenting cases involved allegations of four or more risk factors (69 per cent).<sup>4</sup>

12. Lighthouse was expanded nationally on 28 November 2022 to be available in 15 family law registries. This means that risk screening, triage and differentiated case management, is now offered to any party filing parenting orders only, or both parenting and financial orders. The most recent data from the Courts indicates that since expansion, 59 per cent of matters were classified as High Risk, 18 per cent were classified as Medium Risk, and 23 per cent were classified as Low Risk.
13. Despite this, specialist Women's Legal Services report that there is a high number of clients not completing the triage tool for Lighthouse. We note that the Family DOORS Triage Questionnaire is currently provided only online and in English. It is critical that the Family DOORS Triage Questionnaire is accessible for culturally and linguistically diverse parties, those with low digital literacy and access, and those living with disability.
14. Whilst the expansion of Lighthouse is a welcome step, it is too early for us to provide detailed comment on the impact of these changes for our clients. It is critical that there is robust ongoing monitoring and evaluation of Lighthouse to ensure continuous improvement in relation to the Courts' approach and so that high risk cases do not continue to fall through the gaps.<sup>5</sup>

#### ***Systemic response to deaths of adults or children who have had involvement with the family law system***

15. WLSA notes there is currently no systemic response to the deaths of adults or children who have had involvement with the family law system. Sometimes these deaths may be considered by coronial inquests, domestic violence death reviews or child death reviews. These provide key evidence on the risk factors for domestic violence fatalities and have been used internationally to inform the development of risk assessment tools.<sup>6</sup>
16. We recommend a national approach to family and domestic violence deaths (for both adults and children) is implemented to collate data at a state, territory and federal level; investigate system failure (including in relation to the family law system); make recommendations for immediate and long-term systemic change; mandate state, territory and federal agency responses to, and public monitoring of, review mechanisms.

#### ***Family violence risk information sharing scheme and register***

17. WLSA acknowledges the recent commencement in May 2024 of the *Family Law Amendment (Information Sharing) Act 2023*. While it is too soon to comment on the operation of these provisions, WLSA supports the use of orders for information sharing agencies to provide particulars and or documents or information relating to family violence and child abuse which may be issued at any time during proceedings and may be issued to the same information sharing agency multiple times in proceedings, for example, to ensure the court has current material on which to make decisions.

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<sup>4</sup> *Family Circuit and Family Court of Australia, 'FCFCOA Annual Report 2022-23'* Available at: [FCFCOA Annual Report 2022-23](#).

<sup>5</sup> We recognize the important research being undertaken in this regard by ANROWS - the 'Family violence triage in family courts: Safety, efficacy and benefit' project.

<sup>6</sup> McCulloch, J., Maher, J., Fitz-Gibbon, K., Segrave, M., Roffee, J., (2016) *Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF)*. Prepared for the Department of Health and Human Services by the School of Social Sciences, Focus Program on Gender and Family Violence: New Frameworks in Prevention, Monash University. P. 33. Available at: [review-of-craf-final-report.pdf \(monash.edu\)](#) p. 33



18. WLSA has joined with National Legal Aid to call for a national family violence risk information sharing scheme and register. Governments across federal, state and territory jurisdictions must implement a national risk information sharing scheme and register to increase transparency, accountability and information sharing across the sector. This could include a real time register of family court orders, family violence orders, and other relevant information regarding risk factors including child protection issues.
19. The proposed national family violence risk information sharing scheme and register would go further than Court-initiated information-sharing orders under the *Family Law Act 1975*, to better enable prescribed organisations and services across jurisdictions to share information to facilitate assessment and management of family violence risk to children and adults based on information available in real-time.
20. This scheme could be modelled on the Victorian Family Violence Information Sharing Scheme. The Victorian scheme supports effective assessment and management of family violence risk, as Information Sharing Entities or 'ISEs' (key organisations and services) can share information related to assessing or managing family violence risk. The Scheme supports ISEs to keep perpetrators in view and accountable and promotes the safety of victim-survivors of family violence.<sup>7</sup>
21. It is our view that an information sharing framework should be focussed on the agency and safety of the victim-survivor and best practice including the informed consent of the victim-survivor. Information sharing is a tool to assist in increasing safety, but it should not be seen as a panacea. In some cases, information sharing will lead to more timely and safer outcomes, however an increase in information will not address systematic issues such as delay or inexperience in matters involving family violence. There should also be safeguards in information sharing frameworks and we have made previous recommendations in relation to this.<sup>8</sup>

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<sup>7</sup> National Legal Aid and Women's Legal Services Australia, Media Release: Domestic and family violence legal services urge Federal and State Governments to introduce suite of national reforms to stop crisis', 3 July 2024. Available at: [Domestic and family violence legal services urge Federal and State Governments to introduce suite of national reforms to stop crisis - National Legal Aid](#)

<sup>8</sup> See p88-91, Women's Legal Service Australia submission, ALRC Review of the Family Law System, November 2018, <https://www.wlsa.org.au/wp-content/uploads/2023/02/WLSA-submission-ALRC-Review-of-the-Family-Law-System-27-November-2018.pdf>



### Recommendations

1. **Ensure that legal assistance is available to help victim-survivors navigate their family law matters in order to ensure that family violence risk is appropriately assessed and addressed.**
2. **Robust ongoing monitoring and evaluation of Lighthouse and family violence risk assessment, triage and case management within the Federal Circuit and Family Court of Australia.**
3. **Ensure the Family DOORS Triage Questionnaire is accessible, including for culturally and linguistically diverse parties, those with low digital literacy and access, and those living with disability.**
4. **Implement a national approach to family and domestic violence deaths (for both adults and children) to collate data at a state, territory and federal level; investigate system failure (including in relation to the family law system); make recommendations for immediate and long-term systemic change; and mandate state, territory and federal agency responses to, and public monitoring of, review mechanisms.**
5. **Commonwealth, State and Territory Governments should implement a national risk information sharing scheme with safeguards and a register to increase transparency, accountability and information sharing across the sector, including a register of family court orders, family violence orders, and other relevant information regarding risk factors including child protection issues.**

**Term of Reference 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**
22. Family violence orders (**FVOs**) are generally made in Local or Magistrates' Courts at the State and Territory level. WLSA's view is that the primary jurisdiction for the making of family violence orders should continue to be the State and Territory Courts. State and Territory Courts have the relevant experience and focus on safety and provisional orders can apply immediately upon being issued by police in most jurisdictions.
  23. The making of parenting orders usually requires the exercise of federal jurisdiction. Parenting orders are generally made in the FCFCoA, noting that State and Territory Courts do have some delegated powers that they rarely exercise to make parenting orders. In accordance with the Constitution, decisions made through the exercise of federal jurisdiction will prevail over decisions made through the exercise of state or territory jurisdiction. Therefore, parenting orders will generally override any inconsistent obligation under a FVO that was made by a State or Territory Court.



24. Where there are already parenting orders in place and a later FVO is made in a State or Territory Court, section 68R of the *Family Law Act 1975 (FLA)* gives power to the State or Territory Court making a FVO to revive, vary, discharge or suspend an existing parenting order where it provides for a child to spend time with a person, where there are inconsistencies between the FCFCoA order and the FVO, to ensure safety is prioritised. In the experience of specialist Women's Legal Services, State and Territory Courts are often very reluctant to utilise these powers to change parenting orders or injunctions because they consider the FCFCoA is the Court with the most relevant expertise and is designed to deal with these matters. Victim-survivors are usually directed by the State or Territory Court to go to the FCFCoA to deal with parenting matters.
25. The Australia Law Reform Commission (**ALRC**) made several recommendations about this in 2010, some of which are yet to be implemented.
- (a) **Recommendation 16–1** *Family violence legislation in each state and territory should require judicial officers making or varying a protection order to consider, under s 68R of the Family Law Act 1975 (Cth), reviving, varying, discharging or suspending an inconsistent parenting order.*
- We support this recommendation being implemented in all jurisdictions and note it is yet to be implemented in New South Wales.
- (b) **Recommendation 16–2** *Application forms for protection orders under state and territory family violence legislation should include an option for an applicant to request the court to revive, vary, discharge or suspend a parenting order.*
- We support this recommendation being implemented in all jurisdictions and believe it would be useful to also include an option which indicates whether the protected person, (if not the applicant) wants to revive, vary, discharge or suspend a parenting order (if an adult).
26. We also support ALRC Recommendations 16-8 and 16-9 about education of Judicial Officers in State and Territory Courts and legal practitioners so they understand the need to vary, suspend or discharge inconsistent parenting orders to ensure the safety of adult victim-survivors and children. This is also emphasised by Recommendation 16-6 which we support:
- “State and territory family violence legislation should provide that courts not significantly diminish the standard of protection afforded by a protection order for the purpose of facilitating consistency with a parenting order.”*
27. We further support Recommendation 16–7:
- “Application forms for protection orders under state and territory family violence legislation should include an option for applicants to indicate their preference that there should be no exception in the protection order for contact required or authorised by a parenting order made under the Family Law Act 1975 (Cth).”*
28. We also note that it is vital that State and Territory Courts as well as the FCFCoA have a deep understanding of the nature and dynamics of family violence and how to identify and respond to such violence, predominantly perpetrated by men against women and children. Judicial Officers exercise of s68R in Local Courts is important so that adult victim-survivors are not unnecessarily exposed to the threat of a contravention action in relation to an inconsistent parenting order with a later FVO in circumstances where they may have a reasonable excuse for non-compliance. The Local Court can take action to help limit systems abuse by making clear how the parenting order is varied to ensure the safety of adult victim-survivors and children

is prioritised. We consider the FCFCoA to be the most appropriate court to make new parenting orders.

### *Injunctions*

29. Section 68B of the FLA empowers the FCFCoA to grant an injunction to protect the welfare of a child. The injunction may be for personal protection of a child, the parent of a child, a person spending time and/ or communicating with a child under a parenting order, or a person who has parental responsibility for a child.
30. Section 114 of the FLA also enables the Court to grant an injunction where there is a marital relationship for the personal protection of a party to the marriage, to restrain a party to the marriage from entering the marital home, in relation to property of the marriage, or in relation to the use and occupancy of the matrimonial home. Section 114(2A) also empowers the court to grant an injunction in de facto financial causes proceedings with respect to the use and occupancy of the residence of the de facto relationship and/ or to restrain a party to the de facto relationship from entering or remaining at the residence or a specified area where the residence is situated.
31. If an injunction made under the FLA is breached, it is up to the person protected by the injunction to file an application seeking an order about the contravention. If police believe on reasonable grounds that a personal protection injunction has been breached by someone who has caused, or is threatening to cause, bodily harm to the person protected by the injunction, or harasses, molests or stalks that person, then they are authorised to arrest them without a warrant pursuant to sections 68C and 114AA of the FLA. In the experience of specialist Women's Legal Services these police powers are very infrequently utilised by police. There is also often a lot of confusion about what is to occur following the arrest by police.
32. WLSA notes that the ALRC in their report on Family Violence: Improving Legal Frameworks recommended that the FLA be amended to introduce a criminal offence for willful breach of a section 68B or 114 injunction.<sup>9</sup>
33. Whilst it is possible to use the family law system to seek orders for the protection of victim-survivors and children, how quickly such an order can be made, the enforcement mechanisms for the order, and the lack of readiness of police to act upon the order, limit its use and effectiveness.

### *Cross-jurisdictional issues*

34. Victim-survivors of domestic and family violence bear a considerable burden navigating the complex, cross-jurisdictional legal systems that exist in Australia when attempting to keep themselves and their children safe from perpetrators of violence. Australia has a disjointed system for responding to families affected by domestic and family violence. This is caused by the federated structure of Australia's legal system where powers are distributed between the Commonwealth and the States and Territories. The Commonwealth is responsible for family law whereas the States and Territories largely deal with child protection and family violence.
35. As a result, victim-survivors are often required to traverse through multiple legal systems, Courts and jurisdictions in their efforts to keep themselves and their children safe. This is problematic as it is confusing, costly, time consuming and traumatic. Compounding this issue

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<sup>9</sup> Australian Law Reform Commission (ALRC), 'Family Violence: Improving Legal Frameworks April 2010' Available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.alrc.gov.au/wp-content/uploads/2019/08/Collated-summary-paper.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/Collated-summary-paper.pdf).



is that there are different process, timeframes and enforcement mechanisms between the Commonwealth and State and Territory jurisdictions.

36. Moreover, victim-survivors often are required to present evidence about family violence perpetrated against them in multiple court settings, even where the evidence may be largely the same. This can be a taxing and re-traumatising experience for clients of specialist Women's Legal Services. Access to legal assistance is vital to support victim-survivors to navigate these multiple legal systems in a safe and supported way.
37. The domestic and family violence legislation, procedures and processes in each State and Territory also vary significantly. In South Australia, Victoria, Tasmania, the Northern Territory and Western Australia children can apply for an FVO on their own behalf against a parent or carer. In New South Wales, only police can apply for an FVO which is solely for the protection of a child under 16 years against a parent or carer. On the other hand, in Queensland a child can only be protected by an FVO if they are in intimate personal relationship with the respondent, or as a named person on an order between other parties, usually the parents.
38. The conditions of an FVO also vary considerably between the States and Territories and can also vary between court registries in the same State or Territory. In most states, an FVO has a specified end date, for example, in Queensland FVOs usually have a duration of five years. In South Australia, an FVO does not have an end date.
39. These differences make it difficult for victim-survivors to navigate multiple court systems and understand their position without access to legal advice and assistance.

**(c) the availability of wrap-around support services and security for victims of violence.**

40. WLSA acknowledges that the FCFCoA's response to family violence has been strengthened through initiatives such as the Lighthouse Project and the expansion of the Evatt List that aim to identify risk early through risk screening and assessment for families that may be at high risk of family violence. The FCFCoA adopts a different case-management process for such matters, including the FCFCoA proactively making orders to obtain evidence about family violence early in the proceedings and often before the first court event.
41. In the experience of specialist Women's Legal Services, safety measures can be put in place in physical court buildings to also try to minimise risk to physical safety, such as having security guards present and escorting people to and from the court room, the bathrooms and meeting rooms. In our experience, Court-based staff and Court Child Experts are usually receptive to requests for assistance, such as safety planning when victim-survivors may need to attend Court for interviews or observations, and requests to not require a child to meet with a perpetrator where there is high risk to their safety. However, WLSA recognises that self-represented litigants may not be aware that they can seek help and support from Court Child Experts, security, and other staff, and enhanced communications and information from FCFCoA may assist with addressing this issue.
42. Since COVID-19, there has been a significant increase in matters being dealt with online. This has improved the physical safety of people accessing the FCFCoA because it has minimised opportunities for physical interaction between victim-survivors and perpetrators. However, online options are not suitable for everyone and further support needs to be provided to enable people to participate online, noting differences in access to technology, internet coverage and the costs of internet coverage and digital literacy. It has also limited the ability of clients to access face to face support services such as the Family Advocacy and Support Services (FASS). FASS is an important part of ensuring safety and providing wrap around services to victim-survivors of family violence. However, it is our experience that there are often limited



FASS workers and therefore not all those who need wrap around support are able to receive it through the FASS.

43. In the specialist Indigenous List, parties can access support services like FASS at court events that occur via Microsoft Teams and/or telephone. We recommend consideration be given to adopting the model used in the specialist Indigenous List for the Evatt List, and properly resourcing this. For example, in the Indigenous List in Sydney, the Judge asks Court staff to assist in making warm referrals to duty solicitors for legal advice. Other support services and the Indigenous Family Liaison Officer (**IFLO**) provide wrap around support. This includes the availability of the IFLO to attend court-based dispute resolution and other court events.
44. There should also be increased funding to specialist family violence and trauma-informed legal services (including Women's Legal Services) to provide duty solicitor services, non-legal domestic and family violence support workers (who can assist with things such as safety planning, referrals, housing applications, help with Centrelink, advocate to police or other services, links with counselling and therapeutic and other support etc), and a domestic and family violence support person who can help support through Court mentions, dispute resolution, interviews and observations.

### Recommendations

6. **Implementation of the 2010 ALRC recommendations 16-1, 16-2, 16-6, 16-7, 16-8 and 16-9.**
7. **State and Territory Courts should continue to be the primary jurisdiction for victim-survivors to seek family violence protection orders.**
8. **Increased funding should be provided to specialist legal and support services, including specialist Women's Legal Services to provide targeted and specialised family violence and trauma-informed support to victim-survivors accessing the FCFCoA.**
9. **Adopting and appropriately resourcing the model used in the specialist Indigenous List to allow parties to access support services like FASS at court events that occur via Microsoft Teams and/or telephone.**

**Term of Reference 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**

#### *Applying for FVOs in different locations*

45. In circumstances where a victim-survivor is in hiding due to safety concerns, consideration should be given in each State and Territory to establishing a new process whereby an FVO application can be made by a police officer in a different region, or a court in a different region. Court appearances could occur via telephone or video. This would allow a victim-survivor to seek the protection of an FVO without disclosing their location.

*If Federal FVOs are being considered*

46. There is currently no power to make a federal family violence order (**FFVO**) and no corresponding criminal offence for a breach of a FFVO under the FLA.
47. We reaffirm that the primary avenue for seeking protection through FVOs should continue to be the State and Territory Courts. If consideration is being given to introducing a power to make a FFVO or improving procedures for an injunction under the FLA with corresponding criminal offences for breach of an FFVO or injunction, this would be a supplement to the existing FVO process. We refer to our submission in response to the Family Law Amendment (Federal Family Violence Orders) Bill 2021, dated 21 June 2021 which addressed this topic in detail.<sup>10</sup>
48. If FFVOs are being considered, WLSA recommends further consideration and consultation on the following:
  - a) Ensuring that victim-survivors can only seek an FFVO if they would otherwise fall under the jurisdiction of the FLA (ie. An FFVO application must be made in conjunction with, and/or during, proceedings for parenting, property or divorce orders). If there are circumstances where a victim-survivor requires protection but does not otherwise fall under the jurisdiction of the FLA, they should apply through their State or Territory based FVO scheme;
  - b) How an interim FFVO or injunction can be made in an expeditious manner;
  - c) How quickly FFVO matters can be listed, noting that delays when urgent protection is required are dangerous;
  - d) Whether there will be a separate and dedicated list for these matters;
  - e) Ensuring that early judicial determination of an FFVO can occur and that the FCFCoA has timely access to evidence of family violence to enable early determination;
  - f) Resource allocation to ensure there can be timely determination of FFVOs;
  - g) That there be no filing fees to make the application for an FFVO;
  - h) How the application for the FFVO would be served on the other party;
  - i) That costs can only be made in very limited circumstances for making an application for an FFVO, so as to limit systems abuse, for example,
  - j) Whether police would have standing to bring an application and/or be heard in the proceedings similar to police in certain State and Territory jurisdictions;
  - k) The amendment to State and Territory-based legislation to enable police to enforce FFVOs/injunctions;
  - l) That enforcement of an FFVO should not be contingent upon the person protected by the FFVO to file a contravention application;
  - m) Resource allocation to police to take reports, investigate and charge the perpetrator where there has been a breach of a FFVO and/or injunction;
  - n) Training for police in being able to appropriately respond to family violence in a way that is family violence and trauma, disability, LGBTQIA+ informed and culturally appropriate;
  - o) Resource allocation to ensure that the FCFCoA is able to implement in-depth, meaningful and on-going training to enable determination of FFVOs;

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<sup>10</sup> Women's Legal Services Australia, 'Submission in response to the Family Law Amendment (Federal Family Violence Orders) Bill 2021' Available at: [Submission in response to the Family Law Amendment \(Federal Family Violence Orders\) Bill 2021](#).



- p) Whether additional funding be provided to expand orders made pursuant to section 102NA of the FLA to cover hearings for FFVOs.
49. We also note the introduction of an FFVO or expansion of the FLA injunction provisions in parenting matters would have effect until the child turns 18 (which can be a considerable period depending on the age of the child). In comparison, State and Territory-based FVOs are usually time-limited for shorter periods (noting the time limits generally vary between each State and Territory jurisdiction and in what circumstances they usually apply).
50. WLSA also acknowledges the recent commencement of the *Family Law Amendment Act 2023* which emphasises the relevance of FVOs. It is too soon to comment on the application of these provisions.

**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**

51. Any consideration of co-location arrangements would need to identify the policy issue that it is directed to address. In our view, there are limited circumstances where co-location arrangements would increase access to justice for victim-survivors. If co-location arrangements are being considered, WLSA recommends further consideration and consultation on the following:
52. State and Territory Court registries are located throughout each State and Territory and in more locations than the FCFCoA registries or circuits. There are far greater accessibility issues in the FCFCoA than in the State and Territory Courts for FVO applications. If a victim-survivor is engaged in a FCFCoA process but does not already have a FVO in place, the victim-survivor can apply for an FVO at multiple locations across the State or Territory. Many State and Territory Courts have wrap around support services, including duty lawyer services, to assist victim-survivors to apply for FVOs, as well as specialist family violence courts in some jurisdictions.
- a) Completing the application form to apply for an FVO is difficult for some parties, particularly culturally and linguistically diverse parties, those with low digital literacy and access, and those living with disability, however in our experience, most parties find the FVO application processes more straightforward than the FCFCoA application process and there are no court filing fees.
53. In our experience, in the FCFCoA, most parties do not attend court in person until interim hearing, or later. At that stage in proceedings, an FVO is usually already in place in circumstances where family violence is involved.
54. FVOs are often applied for by the police and not by the aggrieved person.
55. Pursuant to section 60I of the FLA, in most circumstances, parties must attempt mediation prior to commencing FCFCoA proceedings. By that stage, an FVO is usually already in place in circumstances where family violence is involved.
56. In the event that either the FCFCoA or a State or Territory Court identifies that an application should be filed in the other court for family law proceedings or an FVO respectively, we query whether it would be possible for each registry to list court events on the same day.



**c) the legal and non-legal support services required to promote early identification of and response to family violence**

57. Increasing access to legal and non-legal support services is critical to support victim-survivors and to promote early identification of and response to family violence.
58. Australia is currently experiencing a crisis of family violence and it is critical that frontline services are adequately resourced to meet the need in our community. Women's Legal Services have collected national data on the number of women accessing their services who they are unable to assist. We estimate Women's Legal Services will turn away approximately 52,000 women per year from accessing vital legal assistance and support services due to limited resourcing. Many of these women would be victim-survivors of domestic, family and sexual violence – if they are unable to access critical services their risks to safety will likely escalate, particularly if they engage in legal processes without access to legal assistance.
59. The Federal, State and Territory Governments are currently engaged in negotiations regarding the next National Legal Assistance Partnership, including implementation of recommendations contained in the Independent Review of the National Legal Assistance Partnership (NLAP) Report<sup>11</sup>. The NLAP report recommended expansion of priority groups under the NLAP to include women, quarantined funding for specialist Women's Legal Services, and investment in Women's Legal Services Australia as the national peak body for Women's Legal Services, and we endorse these recommendations. Implementation of these recommendations would enhance the legal and non-legal support services available to victim-survivors of family violence including those navigating the family law and family violence jurisdictions.
60. Specialist Women's Legal Services require urgent funding and budget certainty to ensure that we can continue to provide legal assistance to victim-survivors of domestic, family and sexual violence including in the context of family law proceedings, and meet increase demand for legal assistance services from women in crisis. To support these objectives, the next NLAP agreement (set to be in force from 1 July 2025) should resolve longstanding funding constraints faced by community legal centres in real terms by ensuring higher base funding is provided to meet levels of unmet legal need from victim-survivors of domestic, family and sexual violence, funding is indexed each year to meet increases in CPI and legislated increases to wages and superannuation, and that remuneration of both legal and non-legal staff is equivalent as that of the legal aid commissions in each respective jurisdiction to address the current pay disparity faced by a female-dominated workforce.

**Recommendation**

- 10. Commonwealth, State and Territory Governments should commit to additional funding through the next National Legal Assistance Partnership for specialist Women's Legal Services to provide legal and non-legal support services to victim-survivors of family violence.**

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<sup>11</sup> Dr Warren Mundy FRAeS FAICD, 'Independent Review of the National Legal Assistance Partnership Final Report, March 2024. Available at: [Independent Review of the National Legal Assistance Partnership 2020-25 | Attorney-General's Department \(ag.gov.au\)](https://www.ag.gov.au/Independent-Review-of-the-National-Legal-Assistance-Partnership-2020-25)



**Term of Reference 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.**

61. A national approach to animal abuse as a form of family violence, and reforms to FVO legislation in each jurisdiction, are necessary to improve the safety of victim-survivors and their animals as they navigate the family law system.

***Recognition of animal abuse as a form of family violence***

62. Clients of Women's Legal Services frequently report intentional animal abuse as a form of sexual, domestic, and family violence, whereby abusers exploit the close emotional bond shared by them, their children, and their animals, to inflict significant harm upon our clients. Clients have disclosed various abuse, torture, and death of their animals at the hands of their abusers. Such acts of violence against animals are cruel and horrific, and include:
- Physical abuse – punching, kicking, beating, throwing against walls;
  - Neglect – withholding food, water, shelter, veterinary treatment, inadequate vaccinations;
  - Emotional abuse – screaming and yelling, threatening, intentionally confusing, tormenting;
  - Sexual abuse – bestiality, the coercion of our clients to participate in sexual acts with animals, which may coincide with the production of pornography and injuries to the animal;
  - Torture and killing – shooting, hanging, poisoning, eating; and
  - Disposing of the animals – selling the animals, dumping, surrendering to pounds, releasing from yards and paddocks to runaway/become lost (companion animals and livestock).
63. Threatening animal abuse is also a powerful tool of control for abusers, causing significant psychological harm to adult victim-survivors and their children, who are often powerless to protect their animals. The abuse or threats to abuse an animal have significant practical implications for the safety and wellbeing of a victim-survivor and the welfare of children and the ability of the woman to protect herself and her children.
64. Ensuring the safety of animals, adult victim-survivors and their children is crucial, as many clients have reported that concern for their animal's welfare has delayed or obstructed their ability to leave an abusive relationship, and many women have returned to the abusive relationship to protect animals left with the abuser.
65. In some states, existing FVO legislation partially recognises that animal abuse is a form of family violence:
- a) NSW's *Crimes (Domestic and Personal Violence) Act 2007* includes 'harm to an animal' in its definition of 'intimidation'<sup>12</sup> and its mandatory protection order.<sup>13</sup>
  - b) Victoria's *Family Violence Protection Act 2008* includes animal abuse in its definition of violence to control, dominate, or coerce a family member.<sup>14</sup>
66. We submit that even in the states where the FVO legislation recognises animal abuse as a form of family violence, such as NSW and Victoria, the definitions are inadequate as they are piecemeal and do not provide positive obligations for animals to be protected from abusers. WLSA's view is that there should be national recognition and enforcement of animal abuse as

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<sup>12</sup> *Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 7.*

<sup>13</sup> *Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 36(c).*

<sup>14</sup> *Family Violence Protection Act 2008 (VIC) s 5(2)(e).*

a form of family violence in FVO legislation to ensure consistency across all states and territories.

### *Greater protection of animals – change of ownership*

67. Victim-survivors are limited in their ability to recover their animals through current FVO processes. For example, currently in NSW victim-survivors can seek an ancillary property recovery order (APRO) to recover their animals in Apprehended Domestic Violence Order (ADVO) proceedings. However, this is only possible if the ADVO has not been finalised and there is no dispute over the animal's ownership. Given that many FVO proceedings involve family law issues, disputes over animal ownership often limit the effectiveness of this mechanism in ensuring the protection and safety of both the victim-survivor and the animal. This is illustrated in the case study below. Cases such as these highlight the significant challenges victim-survivors in NSW face with the APRO mechanism being the only method within the FVO system to protect their animals. WLSA understands that states and territories utilising similar mechanisms face similar challenges.

#### **Case Study – Animal abuse in NSW**

*Alison\* and Greg\* were together for █ years, during which Greg subjected Alison to significant physical violence and threats to kill her. Greg was also violent to Alison's dog, █*

*Following a particularly violent assault by Greg against Alison, Greg left the home and took █ with him as a deliberate tactic to further intimidate and control Alison. █, NSW Police charged Greg with criminal offences and applied for an Apprehended Domestic Violence Order to protect Alison from Greg.*

*During the ADVO proceedings, Alison lodged an application for an Ancillary Property Recovery Order seeking the return of █ to her. At the time of the proceedings, █ was registered in Alison's name, and she had paid all vet bills and expenses for █*

*While the Local Court ultimately made the APRO sought, it could not be enforced by police due to a dispute over █ ownership, and the court lacked the power to determine the ownership of "property."*

*Alison had no option but to seek resolution in a second jurisdiction, the Federal Circuit and Family Court of Australia, to have █ returned. With no other assets needing a property settlement in the FCFCoA, Alison chose not to pursue further court action. She agreed to share █ care with Greg, resulting in ongoing contact with him.*

*\* This case has been de-identified, including by not using their real names.*

68. WLSA believes that State and Territory Courts are the most suitable forum to address the safety and care of animals in the context of family violence. The family law jurisdiction is more time-consuming and costly to the victim-survivor than FVO proceedings in the State and Territory Courts. Addressing animal abuse in the FCFCoA requires victim-survivors to navigate and

interact with the defendant in both FVO processes in the State and Territory Courts and the FCFCoA, in circumstances where there are serious allegations of domestic and family violence perpetrated by the defendant against the victim-survivor.

69. The case law highlights that the FCFCoA regards animals as “chattels” and their ownership is determined by the Court as an issue of ownership of property.<sup>15</sup> While there have been occasions where the FCFCoA considers orders for the pet to accompany the child in moving between parents’ houses,<sup>16</sup> rarely does the FCFCoA consider or address the animal’s welfare, or the violence involved when determining ownership of the animal.
70. Including animals in FVOs and enabling ownership orders would empower victim-survivors to protect their animals, benefiting both human and animal victims of family violence. This approach follows a significant trend in the United States, where, as at 2024, 40 states allow animals to be expressly included in domestic violence protection orders.<sup>17</sup> Generally, these laws allow the applicant to take possession of companion animals in the home and/or prevent the respondent from harming or removing companion animals. For example, California law states:

*“On a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent...”*

### **Training of legal professionals**

71. WLSA has previously recommended<sup>18</sup> that the Australian Government fund and coordinate the development of a national comprehensive family violence training program for family law legal professionals (including independent children’s lawyers and family dispute resolution practitioners) and work with state and territory law institutes and bar associations to implement the training.
72. WLSA recommended that the training modules for family law professionals should include training on:
- a) the intersection of family law, child protection and family violence
  - b) cultural competency in relation to working with Aboriginal and Torres Strait Islander clients, including training that builds an understanding of the multiple and diverse factors contributing to the high levels of family violence in Aboriginal communities, and an understanding of Aboriginal and Torres Strait Islander family structures and child rearing practices as well as maintaining appropriate referral procedures, policies and relationships with Aboriginal Community Controlled Organisations
  - c) cultural competency in relation to working with clients of a CALD background (including working with interpreters)
  - d) working with Lesbian Gay Bisexual Transgender Intersex Queer (LGBTIQ+) families
  - e) working with people with a disability
  - f) working with vulnerable clients
  - g) trauma-informed practice.

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<sup>15</sup> For example, *Downey & Beale* [2017] FCCA 316

<sup>16</sup> For example, *Boreland v Boreland* [2002] FamCA 1433.

<sup>17</sup> Michigan State University Animal Legal & Historical Center, ‘Map of State Laws Allowing Domestic Violence Orders to Include Pets’, Available at: <https://www.animallaw.info/content/map-state-laws-allowing-domestic-violence-orders-include-pets>

<sup>18</sup> WLSA submission to House of Representatives Committee 2017, Attachment A, WLSA submission to the Australian Law Reform Commission’s Issues Paper on the Review of the Family Law System, 2018, page 41

73. WLSA also recommends that understanding domestic and family violence be included as a mandatory subject in law degrees.

### **Recommendations**

- 11. FVO legislation in all states and territories should be amended to explicitly:**
  - a. recognise animal abuse as a form of family violence in its definition of family/domestic violence, to ensure there is consistency across all states and territories; and**
  - b. include an order for the protection of animals in FVOs.**
- 12. The relevant sections of FVO legislation should be amended to empower Courts making FVOs to make orders for the exclusive care, transfer, or determination of ownership of animals, particularly when the animal is in the possession of a perpetrator.**

**Further consideration and consultation with stakeholders may be required to determine the principles that underpin this power, and any implementation or enforcement issues. For example, consideration should be given to whether such an order would authorise the local council to transfer the registration of the animal in accordance with the order.**
- 13. The Commonwealth Government should fund and coordinate the development of a national comprehensive family violence training program for family law legal professionals (including independent children's lawyers and family dispute resolution practitioners) and work with state and territory law institutes and bar associations to implement the training.**