

Inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021

The Centre for Excellence in Child and Family Welfare (the Centre) is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations (CSOs), students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

The Centre believes in the right of all children to grow up in a safe and nurturing environment as a part of a family and emphasises the importance of child-centred practice in decision making affecting children. This must be a focus in what is considered 'in the best interests' of the child.

We know from our members that a large proportion of children and families assisted by CSOs are involved, or have been involved, in family law proceedings. Families who seek the assistance of CSOs are often dealing with a range of complex issues. These could include mental health, drug and alcohol related issues, homelessness or housing stress. They may also be experiencing financial stress. Family violence is experienced by many women and children in our family law system.

The Centre welcomes the opportunity to make a brief submission to the Inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021, ('the Bill'). The bill will allow a person to apply for a federal family violence order where they have proceedings before a family law court. These courts will also be able to make a federal family violence order on their own motion. The new orders will be available in family violence circumstances only, where a statutory test has been met. The primary consideration in deciding to issue the order is the relevant person's safety and welfare.

Like state and territory family violence protection orders, the proposed new federal family violence orders will be able to restrict certain behaviours, communication and contact with protected persons. The standard conditions have been developed in consultation with state and territory police to make sure that these can be enforced in practice and proven in court. Protected persons will include children, parents and other persons who have care responsibilities for a child, and parties to a marriage.

The states and territories have agreed that the new orders will be recognised on the National Domestic Violence Order Scheme and will be enforced by state and territory police.

The Centre supports the aim and objectives of federal family violence orders to make it easier and more cost effective for protected persons by reducing the need for people already involved with the family law courts system, to then incur the costs and administrative burden of commencing proceedings in the state court. Many families helped by CSOs have co-existing challenges, so a streamlined and simplified process could be of benefit.

However, the Centre has identified the following areas and questions for further consideration before federal family violence orders come into force.

It is important that allegations of family violence are responded to early and that appropriate safety orders are put in place quickly. Given the large court lists and delays in the family law courts currently, it will be important that allegations of family violence will be tested early on in the proceedings. There will need to be sufficient resources allocated to make sure that allegations are tested early and the application for a federal family violence order is heard immediately without delay and adjournment.

There is growing recognition about the misidentification of perpetrators.¹ This is when the long-term victim of family violence is misidentified as the perpetrator by police attending a family violence incident. This most often applies to women.² In Victoria, Victoria Police, have implemented processes where people who have been misidentified can seek amendment of this. The federal family violence order scheme will need to include provisions that make it easy for people who have been misidentified to seek an overturning of the order without having to lodge an appeal. Family law court appeals can be costly, take time to be resolved and impose an evidentiary burden on the misidentified party. This will add additional complexity and stress for families already dealing with existing challenges.

Recent reforms to the family law system to prevent cross-examination of witnesses and other safeguards against system abuse are welcome. System abuse occurs when court processes are used by perpetrators of family violence to continue to exert control and coercion over their victims.³ The federal family violence order scheme will need to include appropriate safeguards to make sure that these orders are not used by perpetrators in this way.

A further consideration is whether the ban on direct cross examination of victims will be extended to include the hearing of federal family violence order applications. Appropriate safeguards need to be in place to protect both adult and child victim survivors of family violence.

It is important that children are recognised as victims of family violence in their own right, with the right to protection, including conditions on orders that meet their own individual needs. It is important that family violence decision makers have a good understanding of the different forms of family violence and the impact on children. Comprehensive training, including the impact of trauma on child development, must be included as part of the roll-out of the federal family violence order scheme.

It is crucial that the federal family violence order scheme forms part of existing state and territory family violence responses. In Victoria, the MARAM and Child Information Sharing Schemes allow for the state Magistrates and Children's Courts to share and request family violence and child safety and wellbeing related information, including about intervention orders.⁴ This allows for relevant information about the safety and wellbeing of children to be shared across systems. Consideration must be given as to how the federal family violence order scheme will align with MARAM and the Child Information Scheme for Victorian children and their families.

Finally, it is important that victim survivors of family violence are not disadvantaged in seeking federal family violence orders. The Victorian courts have made significant changes following the Victorian Royal Commission into Family Violence. These include locating dedicated family violence practitioners at every

¹ Foundation Knowledge Guide | Victorian Government (www.vic.gov.au), see 11.3

² When police misjudge domestic violence, victims are slapped with intervention order applications - ABC News

³ <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

⁴ <https://www.mcv.vic.gov.au/about/information-sharing-schemes>

headquarter court to support victim survivors and perpetrators during their court experience and assisting with family violence referral pathways and wrap around supports. The family law courts must be adequately resourced to provide a similar level of assistance to parties involved in federal family violence order proceedings. The Lighthouse project does address some of these concerns, however we note that this is currently a pilot project offered in Adelaide, Brisbane and Paramatta.

The Centre recommends that the Bill is adjourned for further consideration in relation to how the provisions will operate in practice and how the practical concerns raised in this submission will be addressed. This is to ensure the safety of children and their families involved in the family law system.