

Ms Susan Templeman MP
Chair, House of Representatives Standing Committee on Social Policy and Legal Affairs
Inquiry into family violence orders
Parliament of Australia
Via email: spla.reps@aph.gov.au

19 July 2024

Dear Ms Templeman MP

Family and Relationship Services Australia (FRSA) welcomes the opportunity to contribute to the committee's inquiry into family violence orders.

FRSA is the national peak body for family and relationship services, which includes child, adult and family support programs funded by the Department of Social Services under the [Families and Children Activity](#), and family law services funded by the Attorney-General's Department under the [Family Relationships Services Program](#) (FRSP). FRSA has 165 members, with 135 members in a direct service delivery role.

Attorney-General Department's FRSP family law services delivered by our members include:

- Family Relationship Centres
- Family Dispute Resolution (FDR) and Regional FDR
- Children's Contact Services
- Family Law Counselling
- Family Relationship Advice Line
- Parenting Orders Program
- Supporting Children after Separation Program.¹

Child, adult and family services (funded by the Department of Social Services) include:

- Family and Relationship Services:
 - Family and Relationship Services
 - Specialised Family Violence Services
- Adult Specialist Support:
 - Find and Connect
 - Forced Adoption Support Services
- Communities for Children Facilitating Partner
- Children and Parenting Support
- Reconnect
- Family Mental Health Support Services.

While this suite of services is considered early intervention, the prevalence of domestic and family violence across Australian communities and the focus of these services on relationships

¹ See Attachment A for a description of these services.



– often at key transition points in people’s lives – means that our members work daily with children, young people and adults impacted by, or at risk of family violence. In particular, the prevalence of domestic and family violence in separating couples accessing family law services is high. Family law services, which are an integral part of Australia’s family law system, have touchpoints with the family court and are impacted by legislative and policy changes within the court system.

RESPONSE TO TERMS OF REFERENCE

As signposted in the terms of reference and canvassed in multiple inquiries, there is an increased risk of domestic and family violence in the period following separation, including during family court proceedings. FRSA therefore supports the intent of this inquiry, which is to make the family law system safer and fairer for victims of violence during family law proceedings. However, while providing better access for victim-survivors to FVOs may contribute to the objective of a safer system this will only be realised if other appropriate supports and practices are in place, the risk of systems abuse is mitigated, and greater priority is given to early intervention. It is vital that victim survivors of domestic and family violence have access to social service supports as well as legal protections. FVOs are one part of a protection ‘solution’ and not a cure-all.²

Legal and non-legal support services required to promote early identification of and response to family violence.

In the FRSA Membership, family violence training is seen as an integral part of Family Dispute Resolution Practitioners’ tool kit. Family Dispute Resolution (FDR) is a non-judicial and non-adversarial approach to negotiating parenting arrangements. It is a legal requirement (with some exceptions) that all separating parents entering the family law system attempt FDR before seeking parenting orders from a court. FDR is also a requirement for those seeking changes to an existing parenting order.

Over five years ago, FRSA surveyed members who provide family law services on their experiences of responding to family and domestic violence in family law contexts. The survey found that most respondents (75%) reported that violence was present in 60-80% of cases at the point of intake. Since this time, Members have anecdotally reported an increase in the numbers of people presenting with family and domestic violence issues.

FRSA Members incorporate comprehensive policies, processes and procedures for identifying violence and for ensuring that the safety needs of clients who are affected by family and domestic violence are identified and met. Safety risk screening and assessment is undertaken with all people accessing family law services and risk assessment is ongoing. This is seen as integral to keeping clients safe, linking people to other supports if needed and, where possible, mitigating violent behaviours.

The universality of early intervention services like FDR means accessing these services tends to have less ‘stigma’ attached to them (i.e., unlike tertiary interventions such as family violence services) and therefore holds the potential for services to build trust and rapport with clients

² A 2018 [study](#) by the Australian Institute of Criminology found that protection orders “are associated with a small but significant reduction in domestic violence”. The effectiveness of FVOs is context dependent and “contingent on police responding appropriately to breaches.” (AIC, June 2018, Trends & issues in crime and criminal justice, No. 551, p. 11.).



using – or at risk of using – violence and link all parties in with appropriate supports, noting the model of FDR requires that services work with both parties to the separating couple. As well as the opportunity to link victim survivors of violence to appropriate supports, we consider that there is a currently untapped potential for early intervention through the process of FDR to work with those who have used or are at-risk of using violence in the future.

Despite our sector working daily with clients affected by family violence and connecting those clients to specialist supports when needed, the artificial distinction between the specialist family violence sector and the family and relationship services sector, which is compounded by the State-Commonwealth division of responsibilities, continues. This means family violence training is not viewed, from a funder’s perspective, as a core requirement for the Family Relationship Services Program in meeting client needs, placing a squeeze on existing budgets and at times requiring service providers to justify their spending on family violence training to the funding body. This needs to change if the system is to fully maximise the early identification of and response to family violence. Greater investment at the Commonwealth government level is required – for the full family law system.

Misidentification of perpetrators and vexatious applications

The misidentification of perpetrators of family violence is a well-documented issue, resulting in FVOs being made that protect the perpetrator and not the victim survivor,³ along with cross orders in circumstances when the victim survivor uses violence in response to abuse (to protect themselves and/or their children). Any changes to improve access to FVOs within the family law system must, therefore, also consider better managing the risk of misidentification of perpetrators and vexatious applications by perpetrators for FVOs put in train to further the abuse against the victim survivor. Attention must be directed to ensuring that perpetrators are accurately identified.

Strengthened training across the family law system to understand family violence and coercive control is one important measure and it is encouraging to see the Commonwealth government investing in better understanding family violence in the family court system with the introduction of family violence training for court professionals. We also consider it essential that mandatory screening and assessment for family violence risk is undertaken in the court context.

The court recently introduced the Lighthouse approach to screen for and manage risk relating to family violence, mental health, drug and alcohol misuse and child abuse and neglect. The Lighthouse approach uses the Family DOORS Triage risk screen – one of several evidence-informed risk screening tools used in the broader family law and family relationship services sector. While Family DOORS is a universal risk screening tool, it is not currently universally applied in the family court context. All parties filing an eligible Initiating Application or Response are invited to complete the DOORS screen, but their participation is voluntary. As occurs for family law services, our view is that safety risk should be screened and managed for *all* matters in family law proceedings and therefore the screening process should be mandatory.

³ Given the gendered nature of domestic and family violence it is generally women who are misidentified by police as the perpetrator and there is a greater risk of being misidentified for certain cohorts of women – Aboriginal women, migrant and refugee women, criminalised women and LGBTIQ+ people. See in the Victorian context for example: Family Violence Reform Implementation Monitor (December 2021), [Monitoring Victoria’s family violence reforms: Accurate identification of the predominant aggressor](#).



Robust and ongoing safety risk assessment will enable court professionals to better identify where existing FVOs are at odds with the presentation of the respective parties (i.e. to better gauge if the actual victim of violence is under protection) and better enable court professionals to support those at risk, including by supporting an application for an FVO during court proceedings.

FRSA further notes that the Family Law Amendment Bill (no. 2) 2023, which we understand will be introduced to Parliament later this year, proposes amendments to the Family Law Act to take into account the 'effects of family violence' in determining property settlements. We support these amendments in principle. However, as argued in our submission on the Exposure Draft there may be unintended consequences of the amendments including:

- potential increase in vexatious applications for family violence orders for the purpose of leveraging for a more favourable outcome in property settlements
- potential increase in contested family violence orders as perpetrators may be less likely to agree to orders without admissions
- could unintentionally contribute to further systems abuse of the victim-survivor.

Reflecting on the proposed changes and possible risks, FRSA Members observed that it will be important for the court to "look behind" family violence orders. Court professionals need to be equipped to do so.

Attending multiple courts

As identified in the terms of reference, the need for victims of violence to attend multiple courts for family law order proceedings and for FVOs places an additional burden on vulnerable clients navigating a complex and alien system.

We would therefore support the introduction of arrangements that circumvent the need for victims of family violence to attend a different location to obtain FVOs. On the surface, 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 seems like a sensible solution. However, we defer to others with the requisite expertise and experience to discuss the pros and cons of such an arrangement and how it compares to the introduction of federal FVOs as previously pursued through the Family Law Amendment (Federal Family Violence Orders) Bill 2021, which lapsed at dissolution.

The capacity for victims of violence to seek protection in the one location is desirable, however attention must also be paid to supporting victims of violence to do so, noting the deterrent effect that subjection to violence and control may have. The Federal Family Violence Orders Bill allowed for listed courts to act on their own motion to make or vary FFVOs. We do not have sufficient understanding of the respective court powers and processes to know if this option would be enabled through a co-location arrangement. Regardless, ensuring sufficient supports within the court context for victims of violence to seek protections is vital. To this end, we would like to see adequate and ongoing investment in the Family Advocacy and Support Services Program such that victims of violence can be supported to seek protection in every registry.



The intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO

Unfortunately, to-date evidence of family violence in family law matters has not necessarily resulted in parenting orders that prioritise the safety of victim survivors of family violence, including children. A recent comprehensive study examining compliance with parenting orders summarised research which had found that the family court system “fails to adequately recognise and respond to trauma and safety concerns”⁴ and reflected on circumstances where “the court had recognised the existence of intimate partner violence yet still ordered unsupervised contact to the father.”⁵

The study further found that a key contributor to non-compliance with parenting orders is family violence and safety concerns, such that the protective parent and/or the children themselves do not comply with the orders because it is not safe to do so.⁶

Where supervised contact has been ordered by the court due to safety risks, FRSA has heard from our members delivering supervised contact through Children’s Contact Services that in some cases their assessment of safety risk is at odds with the court orders. That is, the assessment of the Children’s Contact Service (CCS) is that it is not safe for a parent to have contact – even supervised contact – with a child.⁷ Oftentimes, the child’s view has not been taken into account in determining the parenting orders.

We consider it would be of benefit to the committee’s deliberations to better understand the points of intersection between the family law services delivered by our members, parenting orders and FVOs. We therefore hope the committee will accept a supplementary submission, which we intend to lodge in a few weeks’ time after we have further explored with our members:

- the extent to which there is a mismatch between the court’s assessment of safety risk (as manifest in parenting orders) and the CCS’ assessment of safety risk
- to the extent possible, how often parenting orders in which supervised contact is stipulated are inconsistent with FVOs⁸
- areas of inconsistency or tension that arise in the Parenting Orders Program with respect to the interplay between parenting orders and safety risks
- the extent to which the extension to family law services of the Family Law Amendment (Information Sharing) Act 2023 or like mechanism would enhance safety risk assessment and management for those delivering family law services.

It is hoped that recent amendments to the Family Law Act, which came into effect in early May this year, repealing the presumption of equal shared parental responsibility and specific time provisions, will encourage a focus on the needs and best interests of the individual child rather than a presumed right of a parent to spend time with the child. It is also hoped that enshrining in legislation the requirement for Independent Children’s Lawyers to meet with the

⁴ AIFS (2022) Compliance with and enforcement of family law parenting orders: Final Report, p 32.

⁵ AIFS (2022) Compliance with and enforcement of family law parenting orders: Final Report, p 30.

⁶ AIFS (2022) Compliance with and enforcement of family law parenting orders: Final Report, p 20.

⁷ Note: while the court may order that there be supervised contact between a parent and child, Children’s Contact Services cannot be compelled by the court to accept the case in their service.

⁸ It is important to note that disclosure of FVOs to CCS’ is not mandatory, therefore CCS’ may not always be aware if there is an FVO in place.



child and give the child an opportunity to express their views will form a first step in ensuring children's views in separating families – particularly where family violence is present – will help to bring children's best interests to the forefront. This is as much a cultural shift as a legal shift. While improving access to FVOs within the context of family law proceedings would be welcomed, a shift in understanding, attitude and practice will ensure that improved access results in improved safety outcomes.

As with all changes to the Family Law Act and to the family law system, we would recommend the introduction of a monitoring and evaluation process for any changes to enhance access to FVOs in family law proceedings, to ensure that the changes have their desired effect.

Yours sincerely,



Jackie Brady
Executive Director



ATTACHMENT A – Family Law Services⁹

Family Relationship Centres (FRCs)

FRCs provide information, support and referral services to all families and provide Family Dispute Resolution and access to some legal assistance for separating or separated families.

Family Dispute Resolution (FDR)

FDR services assist families to reach agreement and to resolve their disputes related to family law issues about child and property related matters, outside of the court system. Clients may include grandparents and other extended family members affected by family separation.

Family counselling

Family Counselling services help people with relationship difficulties better manage their personal or interpersonal issues to do with children and family in relation to marriage, separation and divorce. Family Counselling is confidential and inadmissible in family court matters provided that the service is provided by a Family Counselling service designated by the department.

Children’s Contact Services (CCSs)

CCSs enable children of separated parents to have safe contact with the family they do not live with in circumstances where parties are unable to manage their own contact arrangements. CCSs provide a safe, neutral venue for the transfer of children between parties, and where there is a perceived or actual risk to the child, they provide supervised contact between a child and their parent or other family member. Parties may be ordered by a court to attend CCSs to facilitate changeover or have supervised visits with their children.

Supporting Children after Separation Program (SCaSP)

The SCaSP aims to support the wellbeing of children from separated or separating families who are under the age of 18 and experiencing issues with difficult family relationships. SCaSP services provide a range of age appropriate interventions including individual counselling or group work with children. Services can also facilitate access to child inclusive practice as a component of family dispute resolution where assessed as appropriate.

Parenting Orders Program – Post Separation Co-operative Parenting Services (POP)

POP services help separated or divorced families who are in high conflict to work out parenting arrangements in a manner which encourages consideration of what is in a child’s best interests in establishing or maintaining relationships, while at the same time ensuring the safety of all parties.

Family Relationship Advice Line (FRAL)

The Family Relationship Advice Line (FRAL) is a confidential national service comprising telephone information and advice, telephone and online dispute resolution service, and telephone legal advice service.

⁹ See Attorney-General’s Department (December 2022), [FRSP Grant Program Information](#).