

# Inquiry into family violence orders.

## Full Stop Australia submission, July 2024

### About Full Stop Australia

Full Stop Australia is grateful for the opportunity to provide input to the Standing Committee on Social Policy and Legal Affairs (the 'Standing Committee')'s inquiry into family violence orders ('the Inquiry').

Full Stop Australia is a nationally focused not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- ☐ Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma.
- ☐ Conduct best practice training and professional services to support frontline workers, government, and the corporate and not-for-profit sectors.
- ☐ Advocate for laws and systems better equipped to respond to, and ultimately prevent, sexual, domestic and family violence.

Our advocacy is guided by the lived expertise of over 700 survivor-advocates in our [National Survivor Advocate Program](#) ('NSAP'). The NSAP gives victim-survivors of gender-based violence a platform to share their experiences to drive positive change. Through the NSAP, survivor-advocates can access opportunities to share their stories in the media, weigh in on Full Stop Australia's submissions to Government, and engage directly with Government. We are committed to centring the voices of victim-survivors in our work and advocating for laws and systems that genuinely meet their needs.



**Full Stop Australia** is working to put a full stop to sexual, domestic, and family violence through **support, education, and advocacy.**

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## The problem

Full Stop Australia welcomes the goal of the Inquiry, which is to provide better access to Family Violence Orders ('FVOs') for victim-survivors in the family law system and ensure FVOs are effective at keeping victim-survivors safe.

This objective responds to the evidence of the prevalence of domestic violence in matters before the Family Court. Data from the Federal Circuit Court and Family Court of Australia shows that family violence is alleged in 80% of parenting cases, and child abuse or the risk thereof is alleged in 72% of parenting cases filed in those Courts.<sup>1</sup> The data shows risk factors so severe that almost 80% of all parenting cases filed in the 2022-3 financial year were referred to child welfare agencies.<sup>2</sup>

More broadly, the Inquiry has the potential to shed light on, and recommend improved practice in relation to, opportunities to act on known risks to keep victim-survivors safe. A recent study by Monash University and the University of Liverpool demonstrates the need for this. The study, which analysed sentencing transcripts in 235 cases of intimate partner femicide found that:

- The majority of intimate partner femicides (71%) were committed by perpetrators with at least two prior interactions with police, the legal system or child protection before the murder or manslaughter
- Nearly one in five perpetrators was subject to an FVO at the time of the crime (18%), and roughly the same number of perpetrators had previously been subject to an FVO (19%)
- One in six perpetrators had a prior recorded FVO breach (16%)<sup>3</sup>

The study emphasises that more needs to be done to intervene with domestic violence perpetrators who are known to police and other agencies and more effectively manage risks identified in relation to offenders subject to FVOs. As noted by one of the researchers in the study, 'many of these deaths could have been prevented. Most perpetrators featured in these judgments had known histories of violence and in many cases, different points of the system were aware of the violence within the intimate partner relationship.'<sup>4</sup> The researched identified intimate partner homicides 'as the most preventable type of homicide because it is assumed that histories of abuse can provide clear indicators of risk.'<sup>5</sup>

Finally, data shows that opportunities to improve enforcement of FVOs require greater attention. Analysis by the *Sydney Morning Herald* of Family Violence Orders in NSW, known as Apprehended Domestic Violence Orders (ADVOs), issued in NSW between 2019 and 2023 shows a rise in breaches during this period. The data analysis found a 35% increase in breaches, from 17,057 in 2019 to 22,969 in 2023.<sup>6</sup> Analysis also found less severe punishments for breach—with a decline in the proportion of offenders being

<sup>1</sup> Federal Circuit and Family Court of Australia. (September 2023). *Annual Report of the Federal Circuit and Family Court of Australia*. Available at: <https://www.fcfcfa.gov.au/sites/default/files/202311>.

<sup>2</sup> Ibid, 14.

<sup>3</sup> Fitz-Gibbon, K., Walklate, S., Maher, J., McCulloch, J. & McGowan, J. (2024) *Securing women's lives: examining system interactions and perpetrator risk in intimate femicide sentencing judgments over a decade in Australia*. Monash University and University of Liverpool.

<sup>4</sup> Monash University. (18 June 2024). *Securing women's lives: new report examines intervention points and perpetrator risk in intimate femicide cases in Australia*. Media Release. Comments by Professor Kate Fitz-Gibbon.

<sup>5</sup> Fitz-Gibbon et al, above n 3. Citing Bugeja, L., Butler, A., Buxton, E., Ehrat, H., Hayes, M., McIntyre, S. & Walsh, C. (2013), 'The implementation of domestic violence death reviews in Australia,' *Homicide Studies*, 17/4: 353-374.

<sup>6</sup> Sibthorpe, C. & Gladstone, N. "'I'm not going to stop until she's dead': Rising number of men ignore domestic violence orders.' *Sydney Morning Herald*. 28 May 2024. <https://www.smh.com.au/national/nsw/i-m-not-going-to-stop-until-she-s-dead-rising-number-of-men-ignore-domestic-violence-orders-20240527-p5jguk.html>.

sent to jail for breaching an ADVO, when that was their principal charge, and an increase in fine penalties as a proportion of court outcomes from 12% to 21%.<sup>7</sup>

### **Risk of escalation of perpetrator's violent behaviour and heightened risk during family court proceedings**

Victims of domestic and family violence are statistically most at risk of being killed or seriously harmed during and immediately after separating from an abusive partner. In nearly a quarter of intimate partner homicides between 2019 and 2022 in New South Wales, there was a current ADVO in place at the time of the homicide.<sup>8</sup> This is consistent with research considering the lapse of time between separation and the lethal incident, where one case study spoke to a victim being killed by the offender directly after the family court proceeding.<sup>9</sup> More broadly, recent research has found that offenders of intimate partner homicide had on average committed 2.8 criminal offences prior to their perpetration of fatal violence, indicating concerning patterns of violence which must be considered when assessing risk throughout family court proceedings.<sup>10</sup> This increased risk has also been studied in England and Wales, where it was found that women navigating family law proceedings were at an 8-fold increased risk of domestic and family violence, which was further exacerbated if the woman lived in a more regional or rural area.<sup>11</sup> This conclusively affirms that victims of domestic and family violence that are navigating the family court system experience escalated risk. This risk is increased further by coming into contact with the offender as part of the Family Court proceedings.

Speaking to this escalated risk, Dr Bridget Mottram has reported how perpetrators of violence are often their most angry and vengeful in the immediate aftermath of an FVO being taken out.<sup>12</sup> Dr Mottram also spoke to how perpetrators test the boundaries of an FVO to see what they can 'get away' with, gaining confidence where the breach fails to result in a charge. This is alarming in the context that it is reported that while reported breaches of FVOs have increased, the proportion of offenders being charged with a breach has declined.<sup>13</sup> Given the increased risk of escalated violence by the perpetrator throughout family court proceedings, it is essential that more be done to mitigate the heightened risk and better support and protect victims of domestic and family violence.

FVOs are a common response implemented to improve victim safety and reduce reoffending. However, the evidence shows that FVO's are often in place against a perpetrator before a lethal incident. This highlights that they cannot be regarded as fully effective in preventing serious adverse outcomes including significant harm or death.

<sup>7</sup> Ibid. Findings based on analysis of NSW Criminal Courts Statistics from July 2018 to June 2023.

<sup>8</sup> NSW Domestic Violence Death Review Team (Report, 2022) *NSW Domestic Violence Death Review Team Report: 2019-2021*. Available here: [2019-2021 DVDRT Report.pdf \(nsw.gov.au\)](https://www.dvdrts.nsw.gov.au/2019-2021-DVDRT-Report.pdf)

<sup>9</sup> ANROWS (Report, February 2022), *The "Pathways to intimate partner homicide: project: Key stages and events in male-perpetrated intimate partner homicide in Australia*. Available here: [Boxall-et-al Pathways-to-intimate-partner-homicide.2.2.pdf \(anrows-2019.s3.ap-southeast-2.amazonaws.com\)](https://www.anrows.gov.au/publications/boxall-et-al-pathways-to-intimate-partner-homicide-2.2.pdf)

<sup>10</sup> Monash University. (18 June 2024). *Securing women's lives: new report examines intervention points and perpetrator risk in intimate femicide cases in Australia*. Media Release. Comments by Professor Kate Fitz-Gibbon.

<sup>11</sup> Johnson RD, Griffiths LJ, Cowley LE, Broadhurst K, Bailey R (Journal, 2023) *Risk Factors Associated with Primary Care-Reported Domestic Violence for Women Involved in Family Law Care Proceedings: Data Linkage Observational Study*. Available here: <https://www.jmir.org/2023/1/e42375/>

<sup>12</sup> Clare Sibthorpe and Nigel Gladstone, (May 2024) *'I'm not going to stop until she's dead': Rising number of men ignore domestic violence orders*, Sydney Morning Herald. Available here: [Domestic violence NSW: ADVO breaches on the rise across state \(smh.com.au\)](https://www.smh.com.au/news/domestic-violence-nsw/advo-breaches-on-the-rise-across-state-20240505-p5c8qz.html)

<sup>13</sup> Ibid.

The evidence shows that a significant proportion of perpetrators remain undeterred by FVOs, particularly where breaches and conditions are not effectively monitored. Full Stop Australia strongly recommends that additional strategies and process be undertaken to promote increased compliance with policies concerning FVO breaches.

### Increased access and safety in family court proceedings

To be more accessible for victims of domestic and family violence, the family law system should be required to consider the following matters when there is family violence or abuse present in the matters:

- ☐ the nature and seriousness of the family violence and abuse used in the family, including the use of coercive control
- ☐ the nature of pre-separation relationships in the family and the impact of the family violence and abuse and coercive control on those individuals and their relationships
- ☐ how recently the family violence and abuse and coercive control occurred
- ☐ the likelihood of further family violence and abuse and coercive control occurring
- ☐ the manner in which a child was subjected to or exposed to family violence and abuse or coercive control
- ☐ the physical and/or emotional harm caused to the child by the violence and abuse and coercive control
- ☐ the physical and/or emotional harm caused to a member of the child's family by the violence and abuse and coercive control
- ☐ any views expressed by the child
- ☐ whether the other party believes the child would be safe if certain parenting orders are made
- ☐ any steps undertaken by the violent or abusive party to prevent further family violence and abuse from occurring.

Reinforcing the importance of such principles, a victim-survivor surveyed by Full Stop Australia spoke to her experience of the family court system, stating:

*“The presence of DV needs to be ascertained on entry into the family court system and the level of risk should be risk assessed. Where there are issues of DV raised, both parties should be interviewed by an experienced DV psychologist, as many times as is necessary, to determine if DV is present and who is the perpetrator and the victim. This evidence should then be passed to the judge at the first hearing to make a determination of the presence of DV and make interim orders. **Where DV is present, there should be an alternate pathway that prevents the abuser from taking advantage of the adversarial nature of the court.** The court should make it contingent that the abuser attend behaviour change program in order to regain access to their children, of which access should be withheld until they are able to demonstrate that they are a safe person for their children to be around. The presence of DV should also trigger retraining orders to be put in place over the victim/s. It is far too difficult to obtain a restraining order and I had to endure years of stalking before I was able to obtain one when he made threats against both my own and our child's life. Even then I was told it was too dangerous to get the restraining order over our child as it would likely trigger him to carry out his threats. This was terrifying. Because the family court process is drawn out and provided me with little protection, I ended up*

*agreeing to arrangements that were not good for our child out of fear for our safety. **There is little protection provided for victims.***”

It is also worth noting that misidentification of victims as perpetrators in family violence matters, particularly impacting Aboriginal and Torres Strait Islander women, is an issue that requires attention when considering family violence orders in the family court. This can be a serious issue of systems abuse that impacts the access and safety of victim/survivors but also may impact family court proceedings. Recommendations listed below that highlight the importance of expert training for all family law court staff is an important aspect of building understanding of how misidentification of victims can occur and may impact on all participants in family law matters.

## Recommendations

- Full Stop Australia supports the recommendation of the Queensland Domestic and Family Violence Death Review and Advisory Board that the federal government ‘develop a national, transparent approach to family violence deaths in the family law system inclusive of a systemic case review process to understand systemic issues and make recommendations for change’<sup>14</sup>
- A Family Court committee be established with broad community, academic, professional, and lived experience representation to assist and guide court responses and to promote system integration
- An increase in family, domestic and sexual violence specialisation of all personnel in the family law system through targeted recruitment processes, specialist training, wellbeing support, ongoing performance review, and accountability mechanisms
- Full Stop Australia supports implementation of regularly updated training, delivered by experts for all family law professionals on the dynamics of domestic and family violence and sexual violence, the impact of trauma and victim/ survivor perspectives/ experience
- As legislation regarding FVOs varies between jurisdictions, the application process and type of protection offered to victim/survivors differs depending upon where they live. This variation makes it increasingly difficult to measure the effectiveness of protection orders nationally, impacting the ability to undertake necessary review to inform policy positions and best practice. As such, more research is urgently needed to understand how jurisdictional differences of protection orders between states and territories impact the safety of children. Full Stop Australia recommends such research to be undertaken in a manner which examines not only the accessibility and effectiveness of protection orders but also how it varies for more marginalised communities, such as people in rural and regional areas, First Nations and Culturally and Linguistically Diverse communities. This research should also ask about the challenges associated with applying and enforcing protection orders.<sup>15</sup>
- That safety by design principles be implemented across the family court, underpinned by an understanding of family violence dynamics that recognises the impact of coercive control and power differentials on post-separation matters
- The development of innovative responses to extremely high risk and potentially lethal family violence, including immediate no contact and moving away orders.
- That the Court develop processes to better consider patterns of family violence and abuse over time and over the course of successive relationships, by considering previous and relevant Family Court files that involve each of the parties to the present dispute.
- That the safety of the child/ren be prioritised over the rights of a particular parent to have contact with their child/ren. Where criminal law matters are being decided, relevant case management protocols/ rules should be developed that clearly state relevant criminal charges, especially those relating to family violence and/or abuse, be responded to as a significant risk factor in family law proceedings.

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<sup>14</sup> Consistent with Recommendation 4 of the Queensland Domestic and Family Violence Death Review and Advisory Board Domestic and Family Violence Death Review and Advisory Board Annual Report 2018-19 (courts.qld.gov.au)

<sup>15</sup> ANROWS (Report, 2024) *Australian Domestic and Family Violence Death Review Network data report: Filicides in a domestic and family violence context 2010–2018*. Available here: [ANROWS-Research-Report-Filicides-in-a-domestic-and-family-violence-context-2010-2018.pdf](https://www.anrows.gov.au/publications/ANROWS-Research-Report-Filicides-in-a-domestic-and-family-violence-context-2010-2018.pdf) ([anrows-2019.s3.ap-southeast-2.amazonaws.com](https://www.anrows.gov.au/publications/ANROWS-Research-Report-Filicides-in-a-domestic-and-family-violence-context-2010-2018.pdf))

- Earlier and more robust interventions to stop litigation and systems abuse, including through the following:
  - The consideration and response to litigation and systems abuse as part of a broader pattern of coercive control.
  - The development of better responses to litigation and systems abuse, including a screening tool specific to identifying litigation/ systems abuse (or risk thereof), specialised processes, and interventions that assist the court to intervene early to protect victim-survivors in high-risk matters involving system's abuse (or risk thereof).
  - That a specialised response to litigation/ system's abuse be developed to include the early identification of matters and fast tracking these through the court to an urgent final hearing, thereby reducing the number of court episodes and opportunities for abuse to reoccur.
  - That specialised training be developed for the judiciary to equip them to better identify and respond to litigation abuse in a safety-focused, trauma-informed way.
  - That higher professional standards for legal practitioners be enforced to explicitly prohibit litigation in circumstances where the client is using litigation for a collateral purpose of furthering their abuse and/or exerting power and control over their ex-partner and/or children.
- Increased funding for specialist domestic and family violence and sexual violence support services to increase access to support and facilitate safer outcomes for families navigating the family law system in the context of family violence and abuse.