



Committee Secretary  
House of Representatives Standing Committee on Social Policy and Legal Affairs  
Parliament House  
Canberra ACT 2600  
[spla.reps@aph.gov.au](mailto:spla.reps@aph.gov.au)

July 2024

Dear Committee Members,

**Re: Inquiry into Family Violence Orders in the family law system**

We are pleased to have the opportunity to make a submission to this inquiry. Many instances of family violence never come to the attention of the family law courts and thus, we see it as critically important that those that do, are dealt with as well as possible.

By this we mean, that the family law system, through its judicial officers:

- Takes seriously every allegation of violence and treats seriously and respectfully, every person making such allegations.
- Makes time, even in early hearings, to consider any evidence of family violence put before them, including Intervention Orders from State and Territory courts, Affidavits from any person including victims, witnesses, children's teachers, psychologists and relevant others.
- Engages in continuous learning to ensure they understand the impacts and effects of family violence and are equipped to ensure their own practice does not make difficult situations worse and more likely to exacerbate violence.

Our submission below addresses the terms of reference.

Council of Single Mothers and their Children Inc. (CSMC) is a non-profit organisation founded in 1969 by single mothers to secure a better life for women parenting alone and their children. We achieve change by championing the agency, rights and needs of single mothers and their children and providing specialist support services.

CSMC has 5,700 members and 3,000 annual contacts from single mothers seeking information, support, referral and advocacy services. We have quoted some of these women, using pseudonyms, their permission, and de-identifying their statements.

We wish the Committee well in your deliberations.

Regards



**Andi Sebastian**

Communications & Policy Coordinator

CSMC  
Level 1, QVWC  
210 Lonsdale St  
Melbourne Vic 3000

Administration  
T 03 9654 0327  
F 03 9654 0328  
E [csmc@csmc.org.au](mailto:csmc@csmc.org.au)

Support Line  
T 03 9654 0622  
Outside Melbourne  
1300 552 511

W [csmc.org.au](http://csmc.org.au)  
[facebook.com/  
councilofsinglemothers](https://www.facebook.com/councilofsinglemothers)  
ARN A0014618W

## Terms of Reference

The Committee will inquire into and report on how to provide better access for victim-survivors in the family law system to Family Violence Orders (FVO) and the effective enforcement of those orders. The inquiry will have regard to:

### 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.

This first term of reference begs the question: 'Is this Inquiry examining just family court proceedings or the wider family law system? We raise this question because while the research is clear - violence escalates in frequency and severity at separation, placing women and children at considerable risk of harm and even homicide – moments of escalation are not uniform.

The work of Cleak & Bickerdike for example, details flaws in screening processes prior to Family Dispute Resolution and describes how these flaws then flow from mediation through to court hearings.<sup>1</sup> Some women who have been through the various family law risk assessment processes describe some flaws to us including:

- Reliance on questionnaires without assistance. This is particularly a problem where the intent of the question is not clear to the participant, or where they may have language or other difficulties in interpreting or answering the questions.
- Assessments that are then fixed in time with these processes resistant, or in some cases refusing, victim requests to update their risk profile.
- Suspicion of mothers who assess the risk of their children but insufficient attempts to safely engage children in their own assessment.

Thus from the outset of engagement with the family law system, and detailed through consecutive parliamentary and other inquiries, parties who have been subject or witness to, and those who have perpetrated violence, are entering what is still currently an adversarial system that is entirely inappropriate for resolving parenting and other family law disputes.

Factors contributing to this adversity, are:

- Unequal resources and therefore, unequal access to quality legal representation for all parties.
- Long held parental views of 'rights' to children, and intentions such as 'fight to the end' can be brought into court even in the guise of a charming and resolute parent. Conceptual 'end' points, usually invisible to judicial officers, may be serious escalations of violence, including all the way to homicide and in one notable Australian case, bombings of the Family Court and its judges.
- Fears of confrontation warring with fears of not speaking out, can also lead to escalations of conflict both for the one having to speak out in front of the party of whom they are most afraid and the one observing the manifestation of fear.
- Callers to our support services and respondents to our national surveys, regularly convey their sense that taking court action is for their ex-partners, a form of continuing control. They indicate that whether or not violence appears to others to escalate, their own first and

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<sup>1</sup> Cleak, Helen & Bickerdike, Andrew (2016) One way or many ways: screening for family violence in family mediation. *Family Matters*, 2016(98), pp. 16-25.

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- subsequent experiences at court have heightened risk and distress for themselves, and for children ordered by the court to spend time with a parent when they do not wish to do so.
- *“As the family law system is adversarial ... allegations of family violence are often viewed in a suspicious and oppositional manner. This attitude does not contribute to any sense of safety for victims of family violence, and in fact acts as a clear obstacle for family violence victims to a) disclose their experiences of family violence and b) even engage in the family law system at all.”<sup>2</sup>*

While we welcome changes in the Family Law Amendment Bill 2023 that seek to put safety of the child and their carers at the forefront of decision making, since the commencement date of 6 May 2024, we continue to receive reports of courts dismissing the existence of family violence (despite orders tendered) and refusing to consider risks to children (despite submission of school, child psychologist and other reports).

*“Allegations of violence are not given enough weight, resulting in outcomes that are not in the best interests of the children and indeed can cause greater harm.”<sup>3</sup>*

*“My judge deemed that his violence was only directed towards the women in his life. MY DAUGHTER - another female, would be ok. Fast forward █ years, she witnessed his acts of violence with women he dated and then he started directing his rage towards her. █*

*and was reported to the police. They responded immediately and encouraged me to cease contact in her best interest and follow up with counselling. Luckily, she is receiving the help she needed, has not hurt herself again and does not visit her father, even though he still calls. Every step after this would cost us a small fortune; return to FLC to have me appointed as sole decision maker, or to get him to sign her passport, moving out of area and her request to change her name. When in the initial court hearing if the judge understood family violence and took it seriously, all of this might have been prevented.”<sup>4</sup>*

*“When I was applying for the IVO my ex put in 2 applications to the federal circuit court regarding access █ so I had to respond to 3 applications simultaneously.*

*Honestly, I don’t know how I made it through that time in our lives, and often wished I had never left, because life got a lot harder and more dangerous. We had █*

*█ I reported it to the police, they never followed up. He was charged twice with breaching the IVO in the end. However, none of this worked in my favour. My lawyer told me not to ‘sweat the small stuff’ otherwise I would be seen as ‘petty’ by the court. She advised me to only report major breaches, her example being if he turns up to my home and punches me in the face. We lived in constant fear of him, my eldest son slept with a knife under his pillow at that time.”<sup>5</sup>*

*“I appreciate that both parents need to have a relationship with their children, but not at the expense of the children's right to be safe.”<sup>6</sup>*

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<sup>2</sup> Commonwealth of Australia: A better family law system to support and protect those affected by family violence, 2017. Quoting Eastern Community Legal Centre submission 91 pg 8. Accessed at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVI/awreform/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVI/awreform/Report)

<sup>3</sup> CEO, Council of Single Mothers and their Children, 2020: Addressing the Public Hearing for Inquiry into Family, Domestic and Sexual Violence, 19 November 2020.

<sup>4</sup> Carmela (not her real name) contacted our Support Services.

<sup>5</sup> Winona (not her real name) contacted our Support Services.

<sup>6</sup> Phyllis (not her real name), a single mother advocating for children in the family court.

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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.*
- Women going through multiple courts often describe it as a full-time job. They are unable to work if they have been working, some lose jobs for taking too much time off.
  - Many are also grappling with Centrelink and Child Support which are directly impacted by changes to care arrangements (Family Tax Benefit A). Many women describe this as system's abuse due to the interaction of various institutions at play. The mental health impact is great, particularly if litigation continues over many years.
  - These difficulties are trebled or quadrupled for those who cannot afford legal representation. *"The irony of legal aid or community legal services, is that I would only qualify for free help if/when I became homeless; so for those of us who have worked hard all our lives and made sacrifices to buy a home that offers our children stability, we have to go through the soul-destroying process of losing our home before we qualify for any free family law legal assistance beyond a one-hour appointment. By that point, we are often so broken and retraumatised from the experience that we surrender to our perpetrators demands rather than continue a harrowing legal battle."*<sup>7</sup>
- b. *the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO.*

It's perplexing for many that parenting orders will contradict or override a FVO which states that violence has been perpetrated.

- For women who may have English as a second language or those who are not familiar with legal language, it leads to confusion as to the outcome of a final order.
- It conveys a social licence to perpetrators to continue their violent behaviour.
- Women often feel that they haven't been heard and that they've been 'gaslighted' with the court's consent.
- Mothers of children who are afraid of their father feel enormous grief and guilt that they have not been able to protect their children.
- Many women and affected children, then lose faith in both the State and Federal systems to protect the victims. They say: *"there's plenty of encouragement to leave if you or your kids are not safe, but none once the parenting order says he can keep abusing the kids."*<sup>8</sup>

*"FVOs have to be more respected at the federal circuit court, they have to have weight. Women should be able to report any breach of an IVO safely and without reprimand. Otherwise what is the point. It is also that constant threat, coercive control that is family violence, it's not just punching someone in the face. It's the constant fear, the constant reminder that they are there watching you, and have control."*<sup>9</sup>

In addition to the above, mothers and children bound by parenting orders that override or contradict FVOs are then at heightened risk of violence as perpetrators become increasingly

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<sup>7</sup> Miranda (not her real name), who contacted Council of Single Mothers and their Children Support Line.

<sup>8</sup> Alicia (not her real name, a caller to Council of Single Mothers and their Children Support Line.

<sup>9</sup> Single mother who contacted CSMC Support Services

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confident that they will not be called to account. In cases of inconsistency, their safety becomes subordinate to the parenting plan.

Emily (not her real name) called our Support line for help. The FVO issued after her former partner attacked her [REDACTED] includes her young child in the order and conditions. The interim parenting order however requires that the child goes to the father [REDACTED] nights a week. She reports her child coming back to her with unexplained cuts and bruises and saying that her father hurts her. Her lawyer says that is not enough to bring it back to court.

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

We believe there is some support at courts but are not aware of the extent and effectiveness of this in every court including in regional areas.

What we do hear from women is that there are insufficient safe spaces available and that they feel the ways the courts operate belie the promises made in court information. As examples, they cite things such as: 'If there are allegations of family violence or child abuse, this will affect how family law court cases are managed. The court can make arrangements to protect the safety of children and family members.' Some report feeling well supported while others say support is lacking or inconsistent.

*"I have found myself speaking up about the hidden effects of domestic violence, continuing through the fear & discomfort because I do not want anyone to go through what my family went through! I want there to be trained people to support women & their children through the courts! Judges who can see through the smooth-talking manipulative abusers. Psychologists who can see through the fake facades of the abusers, understand the women's trauma & truly make decisions in the best interests of the children. People who will protect & prevent stories like mine from being so common."*<sup>10</sup>

*"Healing from traumatic experiences is paramount to stop the intergenerational pattern of family violence which contributes to Australia's significant health burden. In my personal and professional experience, the financial burden of therapy is typically borne by female victim-survivors. At present, only 10 medicare rebated sessions are permitted per calendar year. An individual can receive 40 sessions for an eating disorder diagnosis, but only 10 sessions for exposure to family violence, despite PTSD, C-PTSD and re-traumatisation experienced during legal processes. All parties involved in family law proceedings require therapy to process the complex emotions that arise from separation and divorce. Therefore, it would be beneficial for all parties to be able to access up to 20 - 40 sessions per year. Also, as a sanction to prevent/deter family violence, perpetrators could be ordered to contribute financially towards the cost of therapy sessions."*<sup>11</sup>

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<sup>10</sup> Single mother who contacted CSMC Support Services

<sup>11</sup> Single mother and psychologist with lived experience of family violence and the family court, contacted CSMC to make this proposal.

### 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*

- Nationally, police and lawyers contribute significantly to the difficulties in applying and enforcing FVO's by downplaying the seriousness of an incident, making women feel silly or unheard, or refusing to take a complaint or to raise the matter in court.
- While protection from family violence is ultimately the responsibility of the legal and justice system, seeking protection against violence in Australia is a bottom-up system driven by the victim-survivor. When a victim survivor finally arrives in the family court system, they are usually isolated and depleted emotionally, physically, and financially. Despite an increased risk to their safety post separation, the onus remains on victim-survivors to initiate and fight for their own, and often, their children's protection. Family violence would not be the scourge it is in Australia if systems were reoriented to ensure that protection from family violence is taken seriously and acted on when reported by the victim.

#### 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*

While we don't have much to contribute to this suggestion, we note that:

- as travel time and childcare can be a barrier, whatever is most convenient for women is helpful, as they usually have to do the school run.
- Given that safe spaces are more often noted as absent in the Federal Circuit and Family Court of Australia, any co-location proposals must be seriously discussed with victim-survivors, and strategies put in place to ensure changes are genuine improvements and that these work from the first date of implementation.
- Women in Western Australia query the variances between family courts due to geography and insist on the need for better consistency across Australia in the education about, and responses to family violence. They cite laws against coercive control as an example of systems on the east coast being ahead of the west coast in their understanding of and responses to family violence.

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

- Government services could do a better job of understanding and acknowledging family violence behaviour to ensure their 'service' is neither re-traumatising nor indicative of systems abuse. Examples include and are not limited to, Centrelink, child support, child protection, and police.
- More funding is required for the many family violence and community support services that are so overwhelmed that many women give up waiting.
- More specialist legal aid options are required, particularly where 'conflicts' arise as often happens in First Nations communities, leaving parties without representation.
- Remedies for the very many women who don't qualify for legal aid but don't have funds to engage a lawyer. Callers to our support services show us that some women are forced to engage one lawyer for one job, might do the next thing themselves, then might be able to get a student clinic to write a letter etc. Sometimes, they are defending themselves against a wealthy party who can afford endless litigation, hiring expensive barristers, and thus circle back to the unsuitable adversarial system, rather than one expressly concerned with safety and wellbeing of all parties.

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#### 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 FVO?

Additional critical reforms required in our view are as follows:

##### 1) Children must be recognised as primary victims of family violence.

Despite recent changes to the Family Law Act, we see women in court facing registrars, judges and independent children's lawyers who continue to dismiss the harmful impact of witnessing and experiencing violence on children. In our view, all judicial officers must recognise and learn to deal appropriately with the impacts of violence on children.

*"Children and young people are particularly at risk of experiencing the effects of family, domestic and sexual violence (FDSV). Violence to children and young people often occurs in homes and family settings. For children and young people who experience or are exposed to FDSV, the harm caused can be serious and long-lasting, affecting their health, wellbeing, education, and social and emotional development. ...*

*"Children and young people may experience many barriers to accessing help that are shared with the general population including, but not limited to, the fear of not being believed, restrictive cultural norms and previous negative experiences with the police and legal systems (AIFS 2015; Coumarelos et al. 2023; RCIRCSA 2017). ...*

*Some surveys have found that many people in Australia hold attitudes that discredit or distrust children and young people's disclosures of abuse and violence (Tucci and Mitchell 2021; Coumarelos et al. 2023). For example, an online survey with a sample of about 1000 people aged 18 years and over in Australia that was weighted to be nationally representative found that 67% of respondents believed that children make up stories about being abused or are uncertain whether to believe children when they disclosed being abused (Tucci and Mitchell 2021)."<sup>12</sup>*

*"Among hospitalisations for FDV-related injuries in 2021–22, the most common perpetrator was parents (72% or about 205) among children aged 0–14."<sup>13</sup>*

***"Only 3% of cases heard by the Family Court lead to orders for no contact with one parent being made, despite the fact that most cases where parents use the courts to make parenting arrangements involve family violence, child safety concerns and other complex issues."<sup>14</sup>***

We know from working with foster care agencies and single mothers who have fostered children, and the children's psychologists, that regularly witnessing violence in the first year of life can, by 12 months of age, permanently damage a child's psyche and learning capacity if they do not receive therapeutic support.

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<sup>12</sup> AIHW, 2024: Family, Domestic and Sexual Violence Population groups. Accessed at: <https://www.aihw.gov.au/family-domestic-and-sexual-violence>

<sup>13</sup> Ibid

<sup>14</sup> Victorian Government, Report of the Family Violence Reform Implementation Monitor 2020: Children as primary victims of violence. Accessed at: <https://www.fvrim.vic.gov.au/report-family-violence-reform-implementation-monitor-1-november-2020/children-primary-victims#australian-family-law>

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The legal framework in Australia does not holistically address the well-being of children in the context of family violence. It does not mitigate their suffering, protect their emotional welfare, or ensure their sense of safety when obliged to spend time with a parent known to have used or continue to use violence.

Many judges have referred in court to children as 'resilient', who 'will get over it', even as they make orders which are entirely contrary to the child's desire and assessed wellbeing. This blindness extends to refusing to consider evidence from sources such as police, school reports, doctor's letters, or other professionals involved in the child's safety and well-being in parenting plans, particularly where this evidence was utilised in family violence orders. The National Children's Commissioner has recently called this out: "*The tragic deaths of three children in Sydney's west over the weekend is yet another reminder of the fact that children are not just 'witnesses' of domestic, family and sexual violence - they are victims in their own right.*"<sup>15</sup>

We particularly note that when the Family or Federal court ignores State-based intervention orders that seek to protect children, or dismisses the allegations of a mother as some form of fevered conspiracy, and order the child to return to the abusive parent, **they condemn the child to one of the worst forms of abuse – hopeless, State-sanctioned abuse from which they cannot escape.**

The safety and wellbeing of children must be in the forefront of all recommendations of this Inquiry.

*"After the Judge said the fact that he was violent to me didn't mean he would be violent with the children, I was forced into picking up the pieces after each contact, dealing with injury after injury, and trying to get help for my children. My experience was that no one was willing to protect my children and speak up against the neglect and abuse he subjected them to. One incident resulted in [REDACTED]*

*[REDACTED]*  
*[REDACTED]*  
*[REDACTED] Please tell the family court to take the risk of violence to children seriously.*"<sup>16</sup>

## 2) Training and accountability must be in place for all judicial officers

As noted earlier, while we strongly support the changes in the Family Law Amendment Bill 2023, it is clear that there is not in place an urgent change in culture and practice.

We consider it urgent that high quality training be mandatory and ongoing for all judicial officers in FCFCOA, and that the court regularly reviews their performance and acts when their behaviour is out of line. While we understand the need for a delay between the Amendment 2023 passing parliament and being enacted, it is clear that the implementation of change has not been sufficiently detailed or widespread.

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<sup>15</sup> Commissioner Hollonds: Media Release, Wednesday 10 July, 2024. Accessed at: <https://humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-calls-children-be-recognised-victims>

<sup>16</sup> Caller to our support services.

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In the brief period since the amendments commenced in May 2024, we have seen:

- Senior Registrars who clearly do not understand Family Violence and its manifestations - including the charm offensive many perpetrators can engage in - openly dismiss FVOs in court. This reduces the credibility and self-confidence of the victim, reinforces (despite FVOs marking him a danger to his family) the sense of entitlement of the perpetrator, and leaves children with no protection at all.
- ICLs who continue to dismiss information about children's safety, won't meet with them, and insist on further psychological counselling chosen and paid for by the perpetrator named in the FVO. All judicial officers (including ICLs) must have more education around children, family violence and the exercises of power. Too often, the worst outcome of a hearing where this is not the case, is that children who have either experienced violence directly, or witnessed it occurring to their primary parent, are told as the result of a court decision that they have to spend more time with a parent of whom they are often deeply afraid. Every child who expresses any reluctance to be alone with a parent deserves the right to have this reluctance properly heard.
- Parenting orders, in our view, need to always support and back up an FVO – or only don't when these have been thoroughly investigated with state issuing authorities or additional and compelling evidence.
- We also contend that parenting orders must respect the home location of the primary parent and not make the primary parent and children move interstate or limit their ability to rent within affordable suburbs. Critically, we see that orders locking a parent and child into an area such as small country towns where the chance of meeting a perpetrator of violence is high, can keep them subject to violence and must be reconsidered.

### 3) National gun ownership and renewals after confiscation

This is not an issue about which we know a great deal but given recent shootings of two women in Western Australia (24 May 2024) and other instances where women have been shot in family violence, including after intervention orders have been issued, we raise it as a matter of concern for FCFCOA to be alert to. Nationally, different legislation and rules are governing practice.

A study undertaken as part of a thesis and unpublished, encountered a higher than expected prevalence of the use of weapons to coerce and control single mothers and their children post separation.

One participant told of her fears that her former partner would regain possession of his guns and use them: *K had a FVO operational for [REDACTED] years after her ex-partner threatened to kill her. With the order about to expire, she is afraid her ex-husband will collect the guns and kill her or resume threatening her with death. It is up to her (according to her state regulations) to appeal the release of the guns. This will cost more money than she has. Seeking orders both in relation to violence restraint and family court support, she no longer has money to make this appeal. She lives in fear due to repeated threats of harm by her ex-husband – [REDACTED]*

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<sup>17</sup> Submitted by a single mother student whose thesis is completed but unpublished.

## Summary recommendations

1. We recommend high quality training that ensures:
  - a. Greater awareness and acknowledgement of covert tactics used by perpetrators, both with their adult and child victims and their behaviours with authorities and professionals who may hold them to account. Examples of the latter include charm, affected innocence, denial, assumption of concerned parent roles.
  - b. Greater consideration given to (primarily) women's disclosures of behaviours such as non-payment of child support (often as a bargaining tool), women revoking IVOs, repeated breaches of IVOs, and breaches of parenting orders.
  - c. Consideration of patterns of behaviour over time, including of continued vexatious claims or badgering for changed orders, and ICL's not meeting with children or using evidence provided by teachers and others who regularly see the children.
  - d. Skills of judicial officers improve in communicating with and listening to children and teenagers, and understanding damages that the wrong parenting orders can do.
2. Better communication between the Family Court and State authorities such as police and magistrates courts, with an emphasis on all bodies working to ensure best practice in every instance including for example, following up all alleged breaches of FVOs and aligning risk behaviours nationally.
3. Risk screening is expanded to all courts and where the victim perceives a change of risk, that this results in an updating of the risk analysis.
4. Wrap around services need to be in place where family violence has been disclosed and these should include ensuring support to access legal representation.
5. Family violence orders are made integral to all the deliberative processes affecting parenting arrangements.
6. Where violence escalates or commences during any process to establish a parenting plan, new or revised family violence orders should be reason to expedite a new parenting plan.
7. FCFCOA must recognise the high rates of women and children being killed in family violence in Australia and prioritise their safety in all instances. This will then include ensuring that all possible support and respectful engagement will be provided to women and children as they seek safe and sustainable remedies to the violence that has already damaged their lives and unless recognised, will continue to do so well beyond the life of any parenting order.
8. As suggested above, children must be recognised as primary victims rather than just unaffected bystanders. Where named in a family violence orders, their well-being and safety must be given paramount consideration.

We will continue to engage with the many parliamentary and other committees of inquiry on the subjects of family violence and family law in the belief that we can, and we must, overcome traditional stereotypes and barriers to the legal safety and wellbeing of women and children in a protective and just family law system.