



**National Women's
Safety Alliance**



Submission to the Standing Committee on Social Policy and Legal Affairs *Inquiry into family violence orders*

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Katherine Berney
Executive Director
National Women's Safety Alliance
www.nwsa.org.au

Terese Edwards
Chief Executive
Single Mother Families Australia
www.smfa.com.au

About NWSA

The **National Women's Safety Alliance** brings together a diversity of voices, expertise, and experience to inform and guide national policy on women's safety. The NWSA, established in August 2021, connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women. This will be achieved through consultation, research, and the collaborative development of expert policy advice to government.

More information about NWSA is available on our [website](#).

About SMFA

SMFA provides a range of platforms that give voice and respect to the lived reality for single mother families. Our key focus is for single mother families affected by hardship, poverty, and gender-based violence. SMFA is informed by the women who contact us, our own research and research collaborations.

SMFA gives voice to matters of concern and seeks solutions for single mothers through our engagement with the media, within parliament settings, at various conferences and committees, and through our extensive networks

More information about SMFA is available on our [website](#).

Introduction

The National Women's Safety Alliance welcomes this opportunity to contribute to the Standing Committee on Social Policy and Legal Affairs inquiry into family violence orders. We consider this an opportunity to reinforce the safety of children in family court proceedings, as initiated through the significant suite of recent reforms to the Family Law Act. While this reform agenda has been admirable and supported by the Alliance, there remains opportunities for improvement that unless addressed will continue to jeopardize safety for children in the family court system.

Our approach to reforms to improve both access and enforcement of Family Violence Orders (FVO) to families in the family law system, centres the safety of children as the foundation of the family law system. For too long the conceptual premise of family law reviews and reform was structured around the priority of *keeping perpetrators from children* rather than *keeping children safe from perpetration*. This subtle though significant adjustment in thinking is pivotal to guiding reform in the family violence space. We include an impactful and de-identified statement from an individual engaging in the family law system while managing family violence at the end of this submission, at **Appendix A**.

The Alliance supports a co-location pilot but uses this submission to highlight how longstanding inconsistencies have challenged the safety of parties to Family Court proceedings. We also note significant considerations that must be addressed in the pilot, including real-time information sharing of orders across court and police jurisdictions and strategies to mitigate against perpetrator misidentification.

Existing Landscape

The adversarial nature of family law matters gives way to a heightened risk of violence where court proceedings are underway. The 2010-2018 Australian Domestic and Family Violence Death Review Network Data Report found that domestic violence orders featured in over 40 per cent of the 240 cases where a male intimate partner homicide offender killed a female intimate partner.¹

Where both parenting orders and family violence orders are in place there can be inconsistencies relating to the scope of orders and the dynamics of violence as it

¹ <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2022/02/21133950/ADFVDRN-ANROWS-Data-Report-Update.pdf>

occurs in the context of ongoing family law proceedings. The current arrangements, as they stand, see family violence orders fall within the purview of state and territory Magistrates' Courts while the making of parenting orders are the jurisdiction of the Federal Court and Family Court of Australia. This arrangement allows parenting orders issued by the Federal Court to take precedence over family violence orders issued by state or territory Magistrates' Courts. Further to this, depending on the jurisdiction, the voices of children can sometimes go unheard in the FVO application while their protective parents can feel pressured into agreeing to parenting orders that mandate contact to appear cooperative and pliable to the court.

Where a family violence order is made following the establishment of parenting orders, the state or territory jurisdiction has capacity, under 68R of the *Family Law Act* (1975) to: *revive, vary, discharge or suspend (a) a parenting order, to the extent to which it*

provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child. Although this power exists, we understand that state and territory courts are extremely reluctant to resort to it, and applicants will typically be referred to the Family Court by police or other officials. There

is an evident need for greater education of judicial officers and other practitioners at the state and territory level of this entitlement to respond to the safety concerns of applicants.

This intersection between parenting orders and FVOs is compounded by limited visibility between jurisdictions. Our members have shared how parenting orders can be manipulated in ways that force the relocation of children despite FVOs being in place. In these cases, the prospect of a survivor of family violence

*The current legal framework inadequately addresses the well-being of children in the context of family violence. It fails to mitigate their suffering, protect their emotional welfare, and ensure their sense of safety when obliged to spend time with a parent known to have used or continue to use violence against their protective parent. Children are seemingly left to accept the detrimental effects of indirect family violence, witnessing violence, and experiencing emotional distress as a consequence. Additionally, evidence from police, child protection, school reports, general practitioners, or other professionals involved in the child's safety and well-being may not be considered in parenting plans, mainly if this evidence was utilised in family violence orders – **NWSA member organisation.***

relocating away from their perpetrator is thwarted as a perpetrator can apply for their return based on the existing parenting orders. Similarly, the intersection between parenting orders and family violence orders can often mean that a perpetrator of violence may on the one-hand agree without admission to an FVO while simultaneously proffer parenting orders to maintain contact.

Again, engrained thinking that presumes perpetrators of intimate partner violence are overwhelmingly safe parents with an entitlement to their children has undermined the safety of children and their protective parents. And evidence also indicates this is unlikely to be the case as 76 per cent of filicides in Australia have occurred within the context of domestic and family violence involving a history of child abuse, intimate partner violence or both.²

Response to a potential co-location model

The Alliance believes that the Federal Court remains the most appropriate court to make parenting orders and that state and territory courts are best placed to respond to FVO applications. With this in mind, we also recognise that pathways to safety are not always linear but can require different touch points throughout the journey and alternate methods to improve child safety should be explored.

The National Women's Safety Alliance does, however, support the piloting of a co-location model which streamlines access to Family Violence Order application, via a magistrate court registrar, on site at a Family Court. A model such as this would reduce administrative touch points for applicants, by removing the requirement to attend a state or territory magistrate's court for application. It would also validate the inherent link between family court proceedings and the potential for an escalation of violence.

The Alliance supports the recent commencement of the *Family Law Amendment (Information Sharing) Act 2023*. The use of orders for real-time information sharing relating to family violence or child sexual abuse would recognise the intersection between family law proceedings and the potential for violence escalation.

We support calls for a national family violence risk and information sharing scheme as a means to increase visibility of violent offenders, orders and accountability of the court and enforcement system more broadly. The existing

² <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2024/06/01140836/ANROWS-Research-Report-Filicides-in-a-domestic-and-family-violence-context-2010-2018.pdf>

framework limits visibility of orders to court officials and police to rely on the disclosures of parties, rather than have access to real time information.

The following are noted in supporting this model:

1. The presence of family violence orders should be integral to the deliberation process and significantly influence parenting arrangements.
2. Safety must be paramount. In the context of family violence orders, the well-being and safety of the children named in the orders must be given priority.
3. In instances where a conflict arises between the parenting orders and family violence orders, the safety of the children must be prioritised through referral to 68R of the *Family Law Act* (1975).
4. The pilot must occur alongside a national and real-time information sharing scheme and register.
 - a. At a minimum this would include a real-time register or dashboard of existing family court orders, family violence orders and other information relating to child protection issues or services.
 - b. The national information sharing scheme would go beyond Court initiated information-sharing orders under the *Family Law Act* (1975) and be available in real-time.

Perpetrator misidentification

While we support a co-location proposal, the risk of perpetrator misidentification must be mitigated against. In streamlining the AVO application process for survivors of violence, there is a risk that perpetrators who willfully manipulate existing court systems to exert violence and garner misdirected sympathy will abuse a co-location system. The threshold for an approved application must be sufficiently high to mitigate against vexatious applications while also recognising escalation patterns and power imbalances.

In this regard, consideration and resourcing must be given to the following measures:

1. An application for a DVO at the co-located site, automatically trigger an 'opt-out' model of referral to family safety services for all parties.
 - a. Given the significant and longstanding staffing constraints of the frontline sector, the proposal of an 'opt-out' referral model would require significant resourcing to viably manage a predictable increase in demand.
2. The appointed court registrar at the co-located court be a specialised, experienced and highly trained appointment.
3. The threshold for an approved DVO application, at the co-location site during the pilot phase, must be sufficiently high so as to mitigate against vexatious applications by perpetrators while confidently recognising violence escalation markers and tactics.

Appendix A: Client Impact Statement

“My desperate attempt to regain custody of my son led me to hastily agree to Parenting Orders, all the while uncertain of his safety or even if he was alive as he had been kept from me for weeks. However, I had to go against these orders to ensure my daughter's safety. Faced with an agonising choice, I wondered which of my children I should prioritise to keep them safe.

Like many in Australia, the school was not legally obligated to adhere to the Family Violence Order, but the police had the authority to enforce it. The school strongly urged me to obtain a Parenting Order. Lost in the system, I got a Parenting Order and found out that the police were hesitant to intervene when my children were at risk or harmed by their father because of the rules of a Parenting Order. What do I choose, their safety at school or their father's home? It was clear that we could not have both.

Due to the kindness of a friend, we found temporary shelter, saving us from the hardship of living in our car. Against all odds, I managed to secure a rental property, which felt like a grand palace to us. However, it was located 20 kilometres away, and I made the decision not to disclose the new address to my abuser and to prioritise our new house as a haven. As a result, I found myself in violation of the parenting order. I was faced with a difficult choice: prioritising our safety and ensuring the security of our new home or complying with the rules of the parenting order. Despite my abuser's history of violent behaviour, which included firearm and assault offences, as well as a family violence order, it seemed that the parenting order overlooked his criminal behaviour.

I currently have a Family Violence Order initiated by the police, which encompasses my children as well. Our troubles began when we were detained at the airport, and now we find ourselves living near our abuser. Despite not physically encountering us, he controls us by preventing our return to my family, where we would feel secure and gain shelter and support. Our financial situation is a constant struggle, and we depend on charitable assistance to make ends meet. Our living arrangements force us into different housing arrangements, and the looming threat of homelessness is a constant source of fear. The Parenting Orders and the court's decision to uphold the orders have confined us to an expense area where I can't pay the rent. Our future is dark and uncertain” –Impact statement from service client (de-identified).