



Providing Leadership, Linking Services, Supporting Relationships

PO Box 326 Deakin West ACT 2600
3-4/36 Thesiger Court, Deakin ACT 2600
T 02 6162 1811
E admin@frsa.org.au
ABN 38 124 321 080
www.frsa.org.au

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

22 August 2024

Dear Ms Templeman MP

I write to provide supplementary information to Family and Relationship Services Australia's (FRSA) submission, which was lodged on 19 July 2024.

As noted in that submission, we thought 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 family violence orders (FVOs). Over the past few weeks we have explored these points of intersection with FRSA members and provide the following observations.

Family Violence Orders and the broader family law system

FRSA supports changes to process and practice that will improve the safety of victim-survivors of family violence during family court proceedings. The court process is, however, bookended by, and at times working in tandem with, family engagement with other family law services – not-for-profit and private. It is imperative that safety for families is enhanced where possible across the full spectrum of services that comprise the family law system. Our focus is on government-funded, not for profit services (See Appendix A for a description of these services).

As noted in our initial submission, it is a legal requirement (with some exceptions) that all separating parents entering the family law system attempt Family Dispute Resolution (FDR) to reach agreement on parenting arrangements before seeking parenting orders from a court. FDR is also a requirement for those seeking changes to an existing parenting order.

In circumstances where a FVO does not allow for mediation, separating parents may proceed directly to court to resolve their parenting matters. In cases where an exception for mediation is indicated on the FVO, the separating parents must first attempt FDR.

FRSA Members delivering government-funded FDR will review the FVO to confirm that there is an exception for contact to undertake mediation, and the child/ren are not included as protected persons on the FVO. The FDR provider will then further assess suitability for FDR via a comprehensive intake and assessment process and, where it is agreed to proceed with FDR, consider how FDR should be delivered (e.g. if shuttle mediation or virtual delivery is required). Underpinning the safety risk assessment is the question of whether proceeding with mediation will increase or decrease the victim's safety.



In cases where an FDR practitioner does not consider it safe to proceed with FDR, the FDR practitioner will issue a section 60I certificate¹ indicating that the matter is not suitable for service. The certificate must then be filed in the court by the parent/party with their application for a parenting order.

A challenge for separating parents is the time it may take to access FDR once an FVO has been issued. Wait times for individual assessment to determine suitability for service may be up to 4 weeks (potentially longer).² Often when an order is made, contact with children stops until mediation can occur. The perpetrator may feel aggrieved that there is a FVO in place, and angry that the victim/survivor has 'stopped' them from seeing their children. Delays in accessing FDR service can further exacerbate the aggrieved feelings of the perpetrator and, in turn, escalate the violence risk for the victim survivors. FRSA members further observed that service delays may also occur if the victim-survivor does not have a copy of their FVO and needs to seek a copy.

Measures to minimise the timeframe between the issuing of FVOs and the commencement of the FDR process may enhance the safety of victim-survivors, including the children in these circumstances. Two possible solutions were raised, which may warrant further exploration:³

- With additional resourcing, Family Relationship Centres (FRCs) and other FDR providers could establish a priority process to streamline matters that have just been awarded an FVO. Their priority caseload would be these matters, and they could move with an intake/assessment and mediation quickly, as well as referring to other supports as needed.
- A FDRP could be funded to be at the Local/Magistrates' Court when FVO hearings are occurring. If both parties are present, immediate, short-term arrangements could be agreed to that day, with a view they return to the FRC/FDR services to review the arrangements as soon as possible.

Jurisdictional differences

As has been canvassed in other submissions to this inquiry, family violence legislation varies across the states and territories with different processes, procedures, enforcement mechanisms and FVO conditions.⁴ Some FRSA members work across or near state/territory borders and either have service sites in multiple jurisdictions or clients accessing services from two or more jurisdictions. For FDR practitioners this requires a level of familiarity with multiple state FV systems and with the different presentation of FVOs.

¹ Section 60I certificates can be issued on the basis that: 1. one party refused to attend the FDR, 2. the FDRP was of the view the matter was not appropriate to conduct FDR, 3. both parties attended and made a genuine effort to resolve the dispute, 4. both parties attended but one did not make a genuine effort, or 5. FDR began but the FDRP determined it was not appropriate to continue.

² Service demand varies across locations.

³ Given current demand for services and the fact that separating parents seeking FDR services may be experiencing family violence but have no family violence orders in place, expediting cases where the family violence risk is already known (i.e. because there is a FVO) and where the FVO may unfortunately trigger an escalation in violence, should ideally not create further delays for other people seeking FDR services, who may also have safety risks. As such, additional funding for additional FDRP positions would be required.

⁴ See for example, Women's Legal Services Australia, Submission 69.



We are encouraged to hear that the Australian Attorney-General's Department is undertaking a national review of domestic violence order frameworks and will consider opportunities for greater consistency across jurisdictions.⁵

Safety risk

In our initial submission we proposed that safety risk screening in the family court context should be mandatory, in the way that it is for family law services. The court's 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. All parties filing an eligible Initiating Application or Response are invited to complete the DOORS screen, but their participation is voluntary. Since the expansion of the National Pilot in late October 2022 to end June 2023, the Federal Circuit and Family Court of Australia (FCFCOA) reported that "88 per cent (5, 189) of eligible matters have had at least one party being sent the risk screen and of these, 73 per cent of matters have at least one party completing a risk screen".⁶ We do not know the current rate of participation in risk screening in the Court. What is clear, however, is that some families are falling through the gaps. FRSA members delivering Children's Contact Services (CCS) observed that it is not uncommon for families directed by the court to attend CCS, for CCS intake and assessment to be the first time parties have been asked about safety risk.

CCS are set up to work with families with significant risk and, as with FDR, an underpinning question guiding the decision on whether to proceed with service is will it increase or decrease the safety of the child/ren and the protective parent? Sometimes, contrary to the view of the court, the CCS may assess that supervised contact between a child and parent does not align with the child's best interests (or the child's preference). A very real consideration for CCS providers is what the options are for that family if service is not provided.⁷ At times a CCS will proceed with service to 'hold' the children and 'lives with'/protective parent until they are in a safe enough situation to stop service. Proceeding with service may also provide an opportunity to put boundaries around the 'spending time with'/perpetrator-parent, thereby keeping the child safer.

Referrals from the Court

Members noted that in the past 3-4 years, some CCS have received more referrals than ever where it is not appropriate to proceed with service – "It's too dangerous for the family and for the CCS to actually hold some of those risks". When we asked Members delivering CCS why they thought this was happening, they reflected on discussions with other family law professionals, including Independent Children's Lawyers, which suggest that more highly complex/high risk cases are entering the court system.⁸ That is, more high risk parties are

⁵ Attorney-General's Department (July 2024), [Submission](#) to Inquiry into Family Violence Orders, p. 14.

⁶FCFCOA, *Annual Reports 2022-23*, p. 15.

⁷ For example, the family might access a private CCS. The Government has made a commitment to introduce an accreditation scheme for CCS, which will cover private as well as government funded CCS. At this point, however, while government-funded CCS must adhere to the [Children's Contact Services – Guiding Principles Framework for Good Practice](#), private providers are completely unregulated and practices and approaches vary.

⁸ This increased complexity is certainly consistent with client trends more broadly. FRSA members across the full spectrum of family and relationship services – family law services, relationship counselling, child and parenting support, family mental health support services – report increased client complexity, including drug and alcohol issues, mental health issues, family violence, financial and housing stress and so forth.



presenting, including more parties experiencing multiple risk factors (e.g. family violence, alcohol and other drugs misuse, child abuse and neglect). It was further noted that within the FCFCOA context, more orders are coming through from Registrars rather than Judges.

Members made the following observations about referrals from the court (both from the FCFCOA and the Family Court of Western Australia) over this period:

- Some jurisdictions are seeing a high number of high conflict families being ordered to family counselling. It is not safe to bring these high conflict families in a room together and talk about issues in a therapeutic way. In some cases, the service can provide a 'workaround' for example, working with the parties individually using a high conflict framework to support skills development such as managing emotions.
 - In the NSW context it was observed that in the last 6-12 months there has been an increase in court ordered family counselling clients, who might be better suited to FDR than counselling.
- At times the courts are referring a parent and child to counselling, presumably on the hope the relationship between parent and child can be improved or restored. In a family violence context, this is not always appropriate and for children who are also engaged with Independent Children's Lawyers and Family Court Report Writers, the additional 'burden' of counselling may be overwhelming rather than therapeutic.
- Sometimes the courts seem to apply the terms 'family therapy' and 'family counselling' interchangeably. Yet case notes from family therapy are admissible, whereas case notes from family counselling are not. It is important that clients are provided with clear information about what is and is not admissible – about what can be used in another process and what cannot. It is also important that the court and lawyers are clear on this and refer parties accordingly. Full understanding would better ensure that parties are directed on a pathway that provides the right level of reportability (and consequence) and the right level of confidentiality (and protection).
- In matters involving family violence where both parties are referred to the Parenting Orders Program, it can open the way for systems abuse (for example, the perpetrator trying to trigger child protection notifications that will assist their case in court). Risk screening and management is critical. At the same time, the Parenting Orders Program provides support for separating parties to manage the requirements of their Orders and access the supports they need – both victims and perpetrators.

Child's Voice

FRSA Members reiterated long held concerns about how infrequently the child's voice is considered in the making of parenting orders and how often the perceived 'right' of a parent to spend time with a child overrides the child's views and preferences and ultimately, their best interests. This has been well documented in research⁹ and canvassed in several inquiries into family law. FRSA members delivering CCS reported that too often they are seeing children at their services where the court has ordered supervised contact yet the child does not want contact with the parent due to abuse/violence.

⁹ For example, Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018). Children and young people in separated families: Family law system experiences and needs, Melbourne: Australian Institute of Family Studies and Dr Georgina Dimopoulos (2024), Inquiry into family violence orders, Submission 58.



FRSA therefore supports recent legislative amendments that aim to prioritise children's best interests in the family law system, including the removal of the presumption of equal shared parental responsibility and specific time provisions, which historically has sometimes resulted in the incorrect presumption that a parent has a right to spend time with a child and this perceived right has been prioritised over the child's safety.

We further support the new legislative requirement that Independent Children's Lawyers meet with the child and give the child an opportunity to express their views, as outlined in the [Guidelines](#) for Independent Children's Lawyers.¹⁰ We are hopeful that, over time, these changes will translate into appropriate parenting orders being made more of the time.

However, as we have argued elsewhere,¹¹ FRSA does not consider that enshrining the requirement for the ICL to meet with the child is a sufficient change to ensure that children's views are heard and assessed appropriately within the broader best interests evidence – particularly for children experiencing family violence. Our view is that a new professional role is required in line with that described in the Australian Law Reform Commission's (ALRC) Discussion Paper on family law reform (DP 86) – “a children's advocate: a social science professional with training and expertise in child development and working with children”.¹² While there are undoubtedly ICLs who are excellent at working with children and young people, child focused and child inclusive practice is not the natural domain of the legal profession. A 'children's advocate would have the necessary skills, experience and disposition (for example, an understanding of child development and trauma informed practice, and an ease with working with children and young people) to enable child participation in decisions affecting them. This would also enable ICLs to focus squarely on their evidence-gathering and litigation management functions.¹³

Information sharing

FRSA welcomes the commencement of the Family Law Amendment (Information Sharing) Act 2023 in May this year, which enables the court to make information sharing orders to get timely information relating to family violence, child abuse and neglect during proceedings. The Act operationalises aspects of the [National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems](#) (The National Framework). More timely access to accurate and current safety and risk information should assist the courts in making safe and appropriate parenting orders.

We note that in many family violence situations, there is not a Family Violence Order in place. In these cases, information sharing between jurisdictions may be fruitless. To this end, we reiterate our recommendation that safety risk screening in the family court context is made mandatory and therefore universally applied.

Clause 4.5 of the National Framework indicates that consideration will be given to including bodies other than those currently prescribed under the Family Law Regulations (state and

¹⁰ As we have argued [elsewhere](#), we consider the requirement for ICLs to meet with the child an important but not sufficient step towards ensuring children's views are heard in a safe and respectful way and assessed appropriately within the broader best interest evidence.

¹¹ FRSA (23 June 2023) *Family Law Amendment Bill 2023 – Senate Legal and Constitutional Affairs Committee, Submission*, p. 10.

¹² ALRC (October 2018) *Review of the Family Law System: Discussion Paper (DP 86)*, p. 170.

¹³ ALRC (October 2018) *Review of the Family Law System: Discussion Paper (DP 86)*, p. 174.



territory child protection or child welfare departments, policing agencies and firearms registries) as Authorised Information Sharing Entities in the future.

FRSA supports further exploration of an expanded information sharing approach to enhance client safety, and specifically the extension of information sharing provisions to government funded family law services. Any expansion of information sharing arrangements would, however, require robust consultation. Information sharing can raise concerns about procedural fairness, privacy and confidentiality. We know, for example, that confidentiality in counselling and support service provision increases the likelihood of clients being open, frank and willing to negotiate or work therapeutically through their issues and preserving the integrity of the therapeutic relationship is important to our members. At the same time, various family law services may be used by perpetrators to further systems abuse, and it can be frustrating for our members to be so constrained in what they can communicate back to the court.

More ready access to information about family violence or child protection issues may enhance the risk assessment process in family law service delivery, enabling risks to be considered 'straight up' rather than relying on a disclosure further in the assessment process. Further, as noted earlier, sometimes a victim-survivor of family violence seeking to undertake FDR does not have a copy of their FVO and this can delay commencement of the intake and assessment process. FDR access to a register of FVOs could minimise delays and the additional burden for the prospective client of tracking down a copy of their DVO.

In other circumstances, the capacity for family law service providers to share information more readily with the court may improve outcomes for victims-survivors of family violence in court proceedings.

Knowledge sharing

FRSA members reflected that where referrals work well and result in appropriate supports and services for parties going through the court, this is underpinned by strong and open relationships across the family law system that enable a shared understanding of the different roles and services in operation. Members spoke positively about information evenings and site visits they have held for family lawyers and judicial officers. The [Family Law Pathways Network](#), which aims to improve collaboration and coordination between organisations and professionals in the family law system is another valued vehicle for our members to learn more about the court system and to familiarise Judicial officers with the different family law services on offer for separating families.

Family Advocacy and Support Service

As noted in our initial submission, we recommend that government provides 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 value of the Family Advocacy and Support Services Program was further confirmed by FRSA members in our recent discussions.

Professional development

FRSA members reiterated the importance of adequate and ongoing professional development on family violence, including coercive control, and related legislative reform for all professionals within the family law system. Our evolving understanding of coercive control, the potential for legislative and policy reforms intended to support victim-survivors of family violence being used to further systems abuse, and the evolving nature of technology-



facilitated abuse all point to the need for greater and ongoing government investment in family violence education and training.

Government investment in family violence training in the court system is encouraging. FRSA recommends that increased investment in training is extended to the community based family law services.

As noted in our initial submission, our sector works daily with clients affected by family violence and connects those clients to specialist supports when needed. Family violence training is a priority for our Members.¹⁴ Yet 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 pressure on existing program budgets and at times requiring service providers to justify their spending on family violence training to the funding body.

Our firm view is that understanding family violence and adopting a trauma informed approach to working with victim survivors must become a core feature across the family law system if we are to make the system safer and fairer for victim-survivors of family violence.

Yours sincerely,

Jackie Brady
Executive Director

¹⁴ And a prerequisite for many family law service professionals. For example, recognising and responding to evidence of family violence forms a part of the Graduate Diploma of Family Dispute Resolution.



ATTACHMENT A – Family Law Services¹⁵

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.

¹⁵ See Attorney-General's Department (December 2022), [FRSP Grant Program Information](#).