



Submission for the Inquiry into family violence orders

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Standing Committee on Social Policy and Legal Affairs
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We thank the committee and the secretariat for their work and efforts to better understand the interactions of protection orders and the Family Law system.

Our submission represents the voices of those with lived experience in this space.

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Who we are

Domestic Violence Advocacy Australia (DVAA) aims to amplify all the voices of those with lived experience of domestic, family and sexual violence, driving transformative change in policies, legislation and societal attitudes across Australia by uniting survivors fostering an inclusive community of support, resilience, collective action and healing.

We lead change by advocating for the rights and needs of domestic and family violence survivors by building a national movement that empowers sharing lived experiences to influence local, state, and national policies. Ensuring the experiences of victims shape safer and more compassionate communities with a focus on prevention and deterrents for perpetrators through survivor led campaigns.

We represent victims of family abuse who have survived and also families of those victims who did not survive.

Recommendations

1. The committee recommends the need for ongoing work in the National framework for shared, consistent language and responses to all forms of domestic violence and a shared response framework for victims of domestic violence within the Family Law System. (ToR 2)
2. The family law system to adopt an evidence-based National Risk Assessment tool (similar to MARAM) to determine primary perpetrator and victim, by assessing all aspects of the relationship, and forms of abuse both physical and non-physical ensuring all family law matters, including financial matters are considered through the lens of family abuse. And that the application of these assessments are conducted by highly trained, skilled social workers with a minimum of five years experience working within a domestic violence setting. (ToR 2, ToR 3)
3. When a National Risk Assessment identifies family abuse, and no Protection Order is in place a Family Law judicial officer should make a referral to state Police for the application to the lower court, for a protection order for the victim to increase safety and protection for the victims. (ToR 3)
4. Implementation of a national family violence information sharing system to link all State and Federal Government services, including but not limited to family law systems, NDIS, Medicare, Centrelink, Department of Education and Social Services to prevent the administrative burden that currently sits with the victim-survivor. (ToR 2, ToR 3)
5. Where financial abuse/significant income inequality is identified and to prevent post separation systems abuse, identification is sought early and allocation of financial responsibility for all legal costs incurred due to the perpetrator's financial abuse. (ToR 1, ToR 2a, ToR 3, ToR 4)
6. Where there is excessive inequality in financial resources and a history of financial abuse, a trustee is appointed for all marital assets until a final order is made. This will prevent financial abuse continuing while parties are under the watch of the trustee and the Family Law System. (ToR 1, ToR 2a, ToR 3, ToR 4)



7. Maintenance of financial status quo during the family court process by providing an order for spousal maintenance at an interim hearing, with an assessment to take place by a forensic accountant to determine the amount of spousal maintenance required. (ToR 1, ToR 4)
 - 7.1. If a party is delaying or being dishonest in full and frank disclosure requirements, then a penalty is applied via an administrative body.
 - 7.2. Dispute of the penalty applied to be directed to the administrative body
 - 7.3. A costs order should be awarded for repeated requests for disclosure that are not provided in a timely manner, and a penalty has been applied.
8. Trauma informed practices in the FCFCOA to reduce psychological long-term harm of victims of FDV. (ToR 1, ToR 2, ToR 3, ToR 4)
9. Legal aid support should be accessible to all individuals who are victims of family violence. Not just limited to families who's joint assets exceed a set amount. (ToR 2, ToR 3c, ToR 4)
10. National record keeping for victim-survivors of incidents of family violence to support victim-survivors to collect evidence of coercive control that is managed by the victim survivor and shared by consent of the victim-survivor. (ToR 1, ToR 2, ToR 3, ToR 4)

Discussion

A note on all case studies provided.

All names within case studies have been changed to uphold section 121 of the Family Law Act, all case studies have occurred within the last five years. All case studies are real, involve real children, real victims and very real outcomes.

A note on shared-language.

Depending on which state you reside, a personal protection order for your safety will be called something different. For the purpose of this submission we use a protection order. Similarly we use the term family abuse to describe all acts of abuse, physical and non-physical, those which are acts of control and those which are psychological, emotional and financial.

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.

In 100% of intimate partner homicides in 2023 in Australia, coercive control was present. We can not simply use the threat or use of physical violence or harm to judge the actions of a perpetrator. During that same time 50% of intimate partner homicides reported physical abuse. Recognition of the dangers victims face when experiencing coercive control must be addressed by the FCFCOA in all family matters when family abuse is identified.

Perpetrators of family abuse are likely to have used the threat of family law proceedings to their victim long before the victim even steps foot inside the FCFCOA. Things like "I will take the children" and "you won't see a cent from this house" keep many victims stuck in abusive relationships for many years.

CASE STUDY 1: *Mary's* Story*

Mary is the carer of her [REDACTED] son who has profound disability. She has cared for him full time and left the workforce to care for him. They live in [REDACTED] They have been the subject of repeated abuse, over many years [REDACTED]

[REDACTED] Mary and her son endured significant abuse over many years, as she knew she could not afford to go to Family Court, such was the financial barrier, and his threats to take their son. So she remained the subject of his abuse for many years. When they left, they were in refuge for several months until housing was made available to them through the State housing scheme in [REDACTED]. The refuge ensured Mary had a protection order to keep her and her son safe.

Mary would not need parenting orders from the Family Court of WA, due to her son's age but she could lodge a case in Family Court to seek property orders for their shared assets; however the years of abuse she suffered would not be considered under the current federal approach to property proceedings. Mary would not be eligible for the Lighthouse/Evatt List under current arrangements of the Family Court.

CASE STUDY 2: Charlotte's Story*

Charlotte and Matt have [REDACTED] children. During the marriage Charlotte was beaten, threatened, raped. Matt was successful, had a lot of charisma, charm and would often abuse and beat the children. Charlotte was terrified that if the matter went to Family Court, Matt would have access to the children on his own - without her supervision and ability to placate him when he was in one of his 'moods.' Matt repeatedly used the threat of Family Court, draining the family asset pool against Charlotte in order to [REDACTED]. On the last occasion of his family abuse, Matt [REDACTED]. Charlotte called the Police, had Matt removed from the family home and filed for property proceedings in the FCFCOA, and in local court for a protection order, which was granted.*

Even though Charlotte suffered years of abuse this will not be recognised in family law property proceedings until the final hearing when the Court makes a determination about the contributions of each party to the asset pool. The determination of the significance of family abuse in property matters is inconsistent throughout cases in the family court system.

CASE STUDY 3: Amy's Story*

Amy and Rob* have been together for several years and have [REDACTED] children, Amy has tried repeatedly to leave the relationship, Rob has spent a lot of time out of the family home but has refused to sell it. Rob is a perpetrator of coercive control. He has used many threats on Amy, including that he will 'take the children' if she is to leave him, and that 'he won't give a cent from the house' he also makes threats to her life, her career and to her reputation.*

Rob kidnaps the children while in Amy's care. Rob uses tracking to monitor Amy. Police are called one day after [REDACTED]. Rob accepts the protection order without admission and he refuses to move out of the family home or sell it. They share custody of the children, until one day Rob refuses to send their [REDACTED] child home. Amy files in Family Court for parenting orders. It takes Family Court more than three years to hear the parenting matter, by which time the protection order has expired.

During the financial proceedings, Rob refuses to make full and frank disclosure, he refuses to sell the house on the courts timeline, he draws down against the asset and 'hides' the money. He refuses to tell the court where the money is. When the property

settlement is complete Amy is forced by the ATO to pay out some of Rob's taxation bill from her portion of the property proceedings.

For the years leading up to the final hearing Amy and Rob are made to co-parent, [REDACTED] Rob uses this time and his phone calls to the children to undermine Amy's parenting, to use emotional abuse tactics on the children, and skillfully aligns the children to him.

During the final hearing for parenting matters [REDACTED] the judge dismissed the protection order made [REDACTED] due to it being old and the threat had passed. Rob is still committing acts of abuse over Amy - the judge ordered Rob to have care of their children and misidentified Amy as the perpetrator despite the evidence of the protection order (and many state based reports, such as Staying Home Leaving Violence) to the contrary.

Rob breached the orders many times before the final orders were made and after final orders were made, causing Amy to return to court many times. Rob failed to provide full and frank disclosure in the property proceedings.

Rob was never held accountable for his actions or the breaches. Amy spent \$300,000 on legal bills in order to protect her children, [REDACTED]. The protection order she had for her and her children's safety was ignored and his abuse has endured since the final hearing through repeated breaches of the orders.

In case study 3, the lighthouse project is in place when Amy has to file for a breach. Lighthouse assesses the case as 'Evatt List' suitable. Despite this it was never listed on the Evatt list. Amy has to again return to Court, when Rob breaches in [REDACTED]. The matter is heard on the Evatt list and even though Rob is in breach of the orders there is no accountability for him. Amy pays another \$15,000 in legal fees to try to hold Rob accountable for the breach. In this case the court first saw this matter in [REDACTED]. It dragged on until [REDACTED] Rob is still able to perpetrate abuse onto Amy and now onto their children.

Recognising all forms of family abuse, correctly identifying the perpetrator and putting an end to abusers being able to use the family law system as a weapon is the strongest protection the courts can offer victims of abuse.

We know from the court's own data and reporting that 86% of matters within the family law system have family abuse in them, it is critical that the perpetrator is identified correctly. When a victim leaves a perpetrator is the most dangerous time. If a victim is forced into co-parenting with their abuser, they face a lifetime of abuse and forced contact.

Currently the FCFCOA is only required to consider family abuse in parenting matters. Consideration must be extended to include property only proceedings. The Court could play a vital role in stamping out family abuse perpetration by having the ability to make no contact orders for perpetrators, with an emphasis on perpetrators attending behaviour change programs. This would also stop the courts being used as a weapon.

Improving recognition of state-based protection orders and implementation of a uniform risk assessment and information sharing tool

Currently when a state-based protection order is issued, the administrative burden to ensure that every organisation that is involved in the family's lives is aware of the presence of family violence and any court orders that are in place. This regularly involves repeating details of the trauma inflicted, amplifying the effects of the trauma every time. Sharing information

between the necessary organisations would reduce some of this burden and retraumatization of victim-survivors.

Research shows that services for victims of family violence are fragmented. Incorporating these services into an information-sharing system not only improves coordination among agencies and ensures a more unified response to the complex needs of the victims but also provides significant relief from the administrative burden. This relief can bring a profound sense of ease and comfort to individuals affected by family violence who currently face challenges in accessing necessary support due to the need to navigate multiple services and agencies. This system presents an opportunity to simplify the process and alleviate the administrative burden on those dealing with distress.

Victims often encounter substantial administrative challenges when accessing multiple services. A centralised information-sharing system can streamline processes, leading to more efficient service delivery and timely interventions. This is critical for reducing harm and improving outcomes. Seamless sharing of information among various services and agencies enhances coordination in providing support to individuals and families affected by violence. As a result, faster and more effective interventions can be achieved, reducing the risk of further harm.

It is essential to have a holistic approach that includes healthcare, financial assistance, legal aid, and educational support. Integrating these services ensures victims receive comprehensive care tailored to their individual circumstances, enhancing overall well-being and recovery prospects.

A national information-sharing system can provide valuable insights into family violence's prevalence, patterns, and impacts, guiding targeted interventions, resource allocation, and policy reforms for prevention and support. Therefore, connecting services such as healthcare (Medicare), disability support (NDIS), income support (Centrelink), education (Department of Education), and the court system (Family and local courts) can ensure that victims and survivors receive holistic support that addresses their various needs in a coordinated manner.

It is imperative to prioritise robust privacy and confidentiality safeguards in every information sharing initiative. By implementing effective governance frameworks, we can guarantee the secure handling of sensitive information while enabling authorised agencies to engage in necessary sharing to bolster victim safety and service coordination.

Enabling access to comprehensive services not only empowers survivors by removing bureaucratic obstacles but also fosters resilience and sets the stage for recovery. This empowerment, which enables survivors to regain control over their lives and futures, fosters a profound sense of agency and hope.

Such a system requires strong privacy and confidentiality measures to protect sensitive data. However, when implemented and managed thoughtfully, it can support data sharing while upholding survivors' and victims' utmost security and dignity. The system could be victim centric and controlled, such as an encrypted forum, locked with a PIN or code so that their data remains anonymous until they are ready to disclose.

An integrated national information-sharing system should be designed to optimise processes and improve access to support services, empowering victims, and survivors to focus on healing and moving forward. This coordinated approach highlights the effectiveness and significance of the proposed system, signalling a significant step towards a more

compassionate and responsive framework. By merging various services, including healthcare, financial aid, legal assistance, judicial, and educational support, at all states and federal levels, the government ensures that victims receive comprehensive, personalised care tailored to their specific needs, promoting their overall well-being and recovery journey.

A national risk-based approach to protection orders within the family law system would relieve pressure on victim survivors, police and prevent misidentification.

While the 2016 Royal Commission into Family Violence in Victoria signified progress in validating victims' experiences of family abuse, it is suggested that there has been a subsequent 'over-policing' of domestic and family violence incidents, with a police focus on physical over non-physical violence and cultural attitudes towards women contributing to potential misidentification of true victim-survivors as aggressors. This issue of misidentification and the issuing of protection orders can adversely impact victim-survivors by inhibiting their trauma recovery and it appears to facilitate the 'systems abuse' engaged in by the true perpetrators.

The misidentification of victim-survivors as aggressors can be transferred into the courts through an apparent reluctance by some police prosecutors and magistrates to question a protection order issued to a respondent who has had a history of abuse (both physical and non-physical) as well as the stigma that follows a victim-survivor into the family law system, where a protection order may be looked upon unfavourably in the allocation of property and child custody arrangements.

Policing Methods and Attitudes to Domestic and Family Violence Matters

A Queensland study conducted in 2020 that directly surveyed 16 police officers with family abuse experience found that barriers to an empathetic approach included 'compassion fatigue', bias in relation to physical versus non-physical violence and cultural barriers in remote areas (which aligns with the research-identified gap in cultural awareness and training).

Anecdotally, a person who has first-hand experience with negative police attitudes in handling family abuse has offered insight into the way this experience deterred further interaction with police and the court system, leaving them open to future abuse and disempowerment.

CASE STUDY: Emily's story*

The perpetrator had been banging on and kicking the front door for half an hour, screaming abuse and threatening to use a weapon, before I decided to phone 000. In genuine fear for our lives – knowing how volatile the perpetrator could be – I felt confident that the police would protect us. I had never contacted police before and was unsure what to expect but the dispatcher assured us that police would be there shortly and that set my mind at ease.

When the police arrived, the perpetrator fled to his car and the police said they would 'speak to him' shortly but first needed to speak to us. The female officer then began admonishing us for being 'hysterical' on the phone and inflaming the situation by further 'upsetting' the perpetrator. The officer went on to say that she doubted he had a weapon and that this was nothing more than a 'domestic disturbance' because no one in the house was physically harmed.

The officers went away to speak to the perpetrator and returned to inform us that he was not a threat and that he was deeply hurt by feelings of rejection. Both officers expressed concern for the perpetrator's wellbeing several times, implying that we reconcile as a solution.

The abuse continued but no further help was sought from police; the trust was completely eroded.

Perpetrators breaching protection orders and using the family law system to continue family abuse

The current system enables perpetrators to breach protection orders through financial abuse and use many aspects of the family law system to intensify their abuse, with no consequences for this breach. The pressure of being in court further enhances the trauma experienced by the victim-survivor. Early identification of financial abuse, coupled with the FCFCOA having the power to make orders to engage a trustee to manage the marital assets would prevent the perpetrator from leveraging the family law system to continue financial abuse and it would prevent the victim-survivor from experiencing financial hardship and uncertainty after they have left.

CASE STUDY: Renee's story*

■ days after an interim order was granted, stating that the husband was to pay all outgoing costs for the marital home, Renee received a letter from her husband's lawyers stating that they do not agree to payment of the gas, electricity, home phone, internet and contents insurance, requesting her to transfer the bills into her name, and that she contact the perpetrator directly to notify him when payments were made, despite there being a no contact FVO in place. This then forced Renee to seek further legal advice to respond to the letter, which was clearly in contradiction to current court orders. This is just one example where Rachel was subjected to ongoing legal costs due the actions of her abuser.

Renee's initial estimated costs of litigation were \$6490 from one law firm and \$15,000 from another in ■■■■■, however her bills quickly exceeded that figure, due to the ongoing financial abuse. The final settlement was agreed to in ■■■■■ without attending a final hearing, and her total costs were approximately \$200,000.

Perpetrators are often late to file documents that are required under full and frank disclosure, or leaving filing of such documents to the very last minute, in order to avoid repercussions, yet the costs for continuing to request documents that are required to be disclosed sits with the victim-survivor.

When an abuser is issued a court order to make certain payments, such as outgoings to maintain the family home, and then refuses to pay, there are no mechanisms available for the victim-survivor to achieve a timely resolution. Renee's story above is an all too often occurring example of this.

Perpetrators will deliberately cut access to shared financial resources with no consequence in the FCFCOA until the final hearing. However, less than 5% of cases get to a final hearing. This is an act of financial abuse, therefore a breach of any protection orders in place. Police and the FCFCOA do not have the resources to address these breaches and hold them to account during family law proceedings. It should be the standard procedure that where there is financial abuse requiring a forensic accountant, the perpetrator should bear the burden of that cost.

Perpetrators who have the financial resources to draw out proceedings do so, in order to maintain their power and control over the victim-survivor. This wears down the victim-survivor to the point where they will leave the court system prematurely with an agreement that may not be just and equitable. Ordering an impartial family trustee to manage the marital assets would go a long way to addressing this considerable inequality.

When there are multiple, lengthy legal proceedings, as a result of continued abuse, the court costs should be covered by the abuser. Currently, decisions on costs are reserved for a final hearing. The burden of outlay of those costs sits with the victim-survivor, before the matter gets to a final hearing. When the reason for attending court for a spousal maintenance order is due to the actions of the abuser, such as cancelling credit cards, or not paying outgoing costs of a house where a court order requires them to, the victim-survivor is currently required to pay the legal costs in order to pursue the order.

The importance of trauma informed practice for all family law services and systems

Trauma-informed services must use a whole-of-system approach. It is about creating a safe, supportive environment that recognises the impact of trauma on individuals and families in a way that better serves clients and promotes healing. Although we were unable to uncover any direct training for family court workers on trauma-informed guidelines, the National Domestic and Family Violence Bench Book provides guidelines to be followed for trauma-informed judicial practice, including directions for a judicial officer to provide clear explanations, explain why particular orders are made, provide information about scheduling, and explain what is happening, all in a non-threatening, calm manner.

The five foundational trauma-informed principles that need to be the foundation of trauma-informed practice and training are safety, trustworthiness, choice, collaboration, and empowerment.

Examples of how the FCFCOA can incorporate more trauma informed practices include:

1. Expand training for all court personnel, not just judges and legal practitioners, to include trauma awareness. This should cover understanding the wide range of trauma responses and how to interact with traumatised individuals in a way that promotes safety and trust.
2. Implement routine screening for trauma among individuals entering the legal system, particularly in family law, juvenile justice, and domestic violence cases. This can help tailor the court's approach to each case based on the specific needs and vulnerabilities of the individuals involved.
3. Make courtrooms more trauma-informed by reducing formalities that might trigger stress or fear. This could include rearranging seating to avoid confrontation between opposing parties and using calming colours and lighting.
4. Strengthen the integration of support services by partnering with mental health professionals trained in trauma care. Ensure these services are easily accessible and provide continuous support beyond the courtroom setting.
5. Develop and implement policies that specifically address the needs of trauma survivors. This could include guidelines on privacy, confidentiality, and the handling of particularly sensitive cases.
6. Continue to use technology to create safer environments for testimony. For example, allow victims to testify from a remote location or use pre-recorded video testimonies in scenarios that could re-traumatize the individual.
7. Establish mechanisms for feedback from individuals who have interacted with the trauma-informed court system. This feedback can be used to continuously improve practices and ensure that the systems in place effectively support recovery and healing.

8. Conduct public awareness campaigns to educate the community about trauma and its impact on individuals. This can help reduce stigma and foster a more supportive environment for survivors seeking justice.

Legal aid support should be accessible to all individuals who are victims of family violence. Not just limited to families who's joint assets exceed a set amount.

Currently, legal aid services in NSW are limited to families whose assets do not exceed a maximum amount of \$420,000. The current limitation excludes many victims from receiving crucial legal assistance, leaving them without the support they desperately need. This exclusion perpetuates inequality and denies justice to those who cannot afford legal representation on their own. Expanding legal aid eligibility criteria would ensure that all victims, regardless of their financial situation, have access to legal resources and representation. This would empower victims to navigate the legal system effectively, seek protection, and pursue justice against perpetrators of family violence. Moreover, it aligns with principles of fairness and equality under the law, striving towards a society where all individuals have equal access to justice and support in times of need.

CASE STUDY: Lauren's Story*

After being eligible for one legal aid assisted mediation to create a parenting plan with her abuser, Lauren sought assistance from a Community Legal Centre to seek help with a superannuation split. After [REDACTED] years together, her abuser had disclosed almost [REDACTED] in one superannuation account and Lauren had [REDACTED] due to being the primary carer of their [REDACTED] children. The Community Legal Centre was unable to assist, stating that property matters did not qualify for legal aid.

Lauren contacted many lawyers for quotes, all ranging from \$2,500 and \$7,000, money required to be paid up front into their trust before an appointment could be made. Lauren was on Single Parent Payment, unemployed and did not have the financial resources to pursue a property order with legal assistance. Lauren was also unable to obtain full financial disclosure by the husband as she could not afford a forensic accountant.

Lauren resorted to using free online resources to draft financial consent orders, accepting a 50/50 split of her abuser's superannuation, even though his income and capacity to earn were far higher, and Lauren had care of the children [REDACTED] of the time. These orders were initially rejected by the superannuation fund. However, they did provide guidance on what to amend to and they were eventually accepted by the Court as consent orders, even though it was questionable as to whether they were just and equitable.

Resources

AHRC, Racism Nobody Wins Guidelines for Working with a Trauma-Informed Approach
https://humanrights.gov.au/sites/default/files/ahrc_sr_2021_8_trauma_informed_approach_a4_r2_0.pdf

Blue knot, [Trauma and the Law \(blueknot.org.au\)](https://blueknot.org.au)

Department of Families, Fairness and Housing, [Framework for trauma-informed practice \(dffh.vic.gov.au\)](https://dffh.vic.gov.au)

Ellen Reeves, 'Family violence, protection orders and systems abuse: views of legal practitioners' (2019) 32(1) *Current Issues in Criminal Justice*, 91–110.

Emily Maple et al, 'Responding to Domestic and Family Violence: A Qualitative Study on the Changing Perceptions of Frontline Police Officers' (2020) 27(12-13) *Violence Against Women* 2377, 2377-2398.

Silke Meyer and Harley Williamson, 'General and Specific Perceptions of Procedural Justice: Factors Associated with Perceptions of Police and Court Responses to Domestic and Family Violence' (2020) 53(3) *Australian and New Zealand Journal of Criminology* 333.

[Trauma-informed judicial practice - National Domestic and Family Violence Bench Book \(aiaa.org.au\)](https://www.aiaa.org.au) 5.11

