



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

ACCESS TO FAMILY VIOLENCE ORDERS

Submission to the Standing Committee on Social Policy and Legal
Affairs Inquiry into Family Violence Orders

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 50 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online

fclc.org.au/about

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ACKNOWLEDGEMENT OF COUNTRY



The Federation of Community Legal Centres acknowledges the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

INTRODUCTION

The Federation of Community Legal Centres (Vic) welcomes the parliamentary inquiry into family violence orders (FVOs). We welcome the government's continued focus on addressing family violence that occurs within a family law context. This recognises that escalating family violence risks remains a pervasive issue within Australia's family law system and continued reform in this area is critical.

This submission seeks to address the terms of reference and propose actionable improvements based on the experience of Community Legal Centres in supporting individuals who face ongoing and significant family violence and require legal protections during family law proceedings. We are pleased to see the Commonwealth Government's continued interest in reviewing the family law system and its commitment to taking action to prevent family violence and abuse, and to improve the protections offered through the family law system to those affected by family violence. As this is a Commonwealth based inquiry, we have focused on reforms to the family law system (as it interacts with the FVO system). However, we acknowledge that there are a range of reforms required at the state and territory level (including, police and court processes) to improve the FVO system.

Community Legal Centres provide extensive assistance to victim survivors of family violence with family law issues and witness the risk of escalation in family violence during family law proceeding, as well as the barriers faced by clients accessing different court systems at the federal and state level. To improve access to FVOs within the family law system and reduce barriers navigating different court systems, it is crucial that families experiencing disadvantage and family violence have access to legal assistance.

Recognising that family law assistance comes at a high cost out of the reach of many families, the overarching issue of insufficient availability of legal assistance for family law proceedings remains critical. Legal assistance plays an important role in curtailing family violence¹ as timely access provides victim survivors with key technical information and expert guidance required to make informed decisions and safely navigate complex legal systems.² Without legal support victim survivors fall through jurisdictional gaps³ and can suffer further violence and systems abuse.⁴ It is also important to provide sufficient resourcing to other parts of the family law system, including for Independent Children's Lawyers (ICLs) and Indigenous Liaison Officers in each registry.

There are a number of reforms that can be implemented to enhance access to FVOs and increase the safety of victim survivors in the family law system. These include: strengthening real time information sharing frameworks; improving cross jurisdictional knowledge of family law and FVO systems among judicial officers and legal practitioners; ongoing training on family violence; and continued reforms to address systems abuse within the FVO and family law systems. Additionally, achieving greater consistency in FVO legislation on a national scale, including uniform definitions of family violence, is vital for effective and equitable protection of victim survivors.

To build on the progress made through recent reforms, it is important to continuously evaluate these reforms, including the Lighthouse's risk assessment, triage and management processes, to ensure they are effectively addressing family violence within the family law process.

Ensuring the safety of victim survivors navigating the family law system requires increasing the availability of ongoing wrap-around support services and consistent access to safety measures within courts at the federal, state and territory levels. We endorse the submissions of Women's Legal Services Australia (**WLSA**), the Asylum Seeker Resource Centre, South-East Monash Legal Service and Fitzroy Legal Service to this Inquiry.

SUMMARY OF RECOMMENDATIONS

Escalation in violence and heightened risk

The role of legal assistance in improving safety outcomes

- **Recommendation 1:** Expand access to family law assistance for victim survivors of family violence and families experiencing disadvantage. This includes an increase in baseline guaranteed funding under future National Legal Assistance Partnership (NLAP) agreements for the community legal sector and expansion of the Family Advocacy and Support Services (FASS).
- **Recommendation 2:** Provide additional investment to the community legal sector to increase capacity to provide legal assistance in matters involving family violence.

Enhancing family violence reforms

- **Recommendation 3:** Strengthen the Federal Circuit and Family Court of Australia's (FCFCoA) risk assessment, triage and case management processes through:
 - a. ongoing monitoring and evaluation of the Lighthouse project
 - b. improving the accessibility and useability of the Lighthouse triage tool (Family DOORS Triage Questionnaire), including for people with limited English, low digital literacy and limited access and people with a disability, and
 - c. increasing the capacity of the FCFCoA to expedite urgent and high-risk family violence matters.
- **Recommendation 4:** Improve understanding of family violence by:
 - a. implementing ongoing and comprehensive family violence education nationally for judicial officers and legal practitioners that work in family law and family violence legal settings,
 - b. introducing compulsory continuing professional development (CPD) requirement for family violence education
 - c. incorporating avoidance of collusion with clients who use family violence as part of legal ethical CPD requirements.

Addressing systems abuse

- **Recommendation 5:** Maintain an ongoing focus on addressing systems abuse within the family law and FVO systems. This includes considering recommendations of the Report of the Special Rapporteur on violence against women and girls, its causes and consequences (the UN Report on parental alienation)¹ and its applicability to the family law system in Australia.

¹ Alsalem, R., A/HRC/53/56, [*Report of the Special Rapporteur on violence against women and girls, its causes and consequences*](#) – Custody, violence against women and violence against children, April 2023.

- **Recommendation 6:** Implement effective policies and procedures to prevent and rectify misidentification of victim survivors as the perpetrator of family violence during family law proceedings, as well as within the FVO system.

Barriers to obtaining and enforcing FVOs

Navigating Multiple Courts

- **Recommendation 7:** Implement a consistent approach to the exercise of the family law jurisdiction by State and Territory Courts under section 68R of the *Family Law Act 1975* (Cth) (the **Family Law Act**) to prioritise safety of victim survivors in need of protection.
- **Recommendation 8:** Build the capacity of judicial officers and legal practitioners in the appropriate application of family law jurisdiction by State and Territory Courts under section 68R of the Family Law Act and develop ancillary guidelines and resources.

Other key reforms

- **Recommendation 9:** In line with WLSA's submission, Commonwealth, State and Territory Governments implement a national risk information sharing scheme and register, including FCFCoA orders, FVOs and other information relevant to risk, with appropriate safeguards.
- **Recommendation 10:** Expand capacity building and upskilling to deepen cross-jurisdictional knowledge of the family law and FVO systems for both the judiciary and legal practitioners working in each jurisdiction.

Wrap-around support and safety measures

- **Recommendation 11:** Increase investment in ongoing wrap-around legal and family violence support for victim survivors involved in family law and FVO proceedings at the federal, state and territory level, including expanding the FASS and options for wrap-around support for parties appearing online.
- **Recommendation 12:** Expand access to safety features across State and Territory Courts and FCFCoA registries for victim survivors of family violence, including (but not limited to) separate entrances and waiting rooms.

Increasing accessibility to FVOs

Improving accessibility of FVO

- **Recommendation 13:** Strengthen consistency of family violence legislation nationally, including by implementing a consistent definition of family violence.

Early holistic legal and other support

- **Recommendation 14:** Increase availability of early and holistic legal and other supports for victim survivors with family law issues through increased investment in Community Legal Centres integrated legal programs.

Any other reforms to enhance safety

Children's views in family law proceedings

- **Recommendation 15:** Assess the effectiveness of the recent family law reforms concerning ICLs in ensuring that children's views and best interests are put before the court.
- **Recommendation 16:** Where an ICL is not appointed or the family report is insufficient, implement additional safe and child-centred options for children to express their wishes and feelings in family law proceedings.

Improving the FVO system for people with a disability

- **Recommendation 17:** Improve access to the FVO system for people with disability and understanding of the unique family violence dynamics and prevalence for people with a disability.

Protecting animals in the family violence context

- **Recommendation 18:** Implement nationally consistent reforms to FVO legislation to strengthen the protection of animals impacted by family violence, including:
 - a. recognising animal abuse as a form of family violence
 - b. providing specific protection of animals in FVOs
 - c. vesting State and Territory Courts with the power to order the transfer or return of an animal and transfer of registration.

SECTION 1: ESCALATION IN VIOLENCE AND HEIGHTENED RISK

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Terms of Reference 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.

The role of legal assistance in improving safety outcomes

Family violence is a central issue in 80 per cent of family law cases,² and separation and family law proceedings are a time of significantly elevated risk of perpetration of violence. This is reflected in ANROWS' National Risk Assessment Principles,³ as well as Victoria's Multi-Agency Risk Assessment and Management Framework (MARAM).⁴ In the MARAM risk assessment, family court proceedings are considered an elevated risk. Community Legal Centres often assist people who experience ongoing and significant family violence during family law proceedings. This can be exacerbated by the adversarial nature of family law proceedings.

The importance of legal assistance in family law proceedings

The risk of family violence increases for victim survivors who cannot access legal advice or are not represented in family law proceedings, and this creates a structural disadvantage.⁵ This disadvantage plays out in a myriad of ways. The power imbalances present in a violent relationship can continue through the family law system leading to unsafe and unfair outcomes. Self-represented victim survivors are required to directly engage, negotiate and challenge the person who has used violence against them. This leaves victim survivors vulnerable to systems abuse and coercion and can impact the ability of victim survivors to advocate openly. Legal assistance is critical in redressing these pervasive power dynamics.

The vast majority of family law matters do not proceed to court but are resolved through negotiation and family dispute resolution. Without access to legal advice at these stages, victim survivors may end up agreeing to parenting arrangements which are unsafe or to unfair property divisions, reducing their ability to recover from often long periods of economic abuse. Legal assistance is critical as part of these less formal stages to enable victim survivors to make informed decisions about their children, their safety and fair property divisions.

In family court proceedings, many self-represented victim survivors do not know how to provide evidence to the court regarding family violence. This leads to family violence risks not being properly considered when determining arrangements which are in the child's best interests. For self-represented

² Federal Circuit and Family Court of Australia. '[Media Release: New court initiatives help uncover higher prevalence of family violence and other risks](#)', 2021

³ Toivonen, C., & Backhouse, C. 2018. [National Risk Assessment Principles for domestic and family violence](#) (ANROWS Insights 07/2018). Sydney, NSW: ANROWS.

⁴ [Family Violence Multi-Agency Risk Assessment and Management Framework](#)

⁵ Alsalem, R [Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#) 2023

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victim survivors, complicated legal processes can prove insurmountable and obscure access to fair and safe outcomes.

A lack of legal assistance leaves victim survivors with limited options to manage escalating risk.⁶ The consequences of not obtaining legal representation for victim survivors are stark. Many will continue to experience family violence, live in poverty,⁷ lose a loving relationship with their children or lose contact with them altogether.⁸ Inevitably, without legal assistance, matters take longer⁹ and avenues for efficient and effective protection may not be explored.

Quality, timely and accessible legal assistance promotes better and swifter access to fairer and safer outcomes and the protective powers of courts which means that families are less likely to be exposed to family violence for extended periods of time.¹⁰

Expanding access to legal assistance for families experiencing disadvantage

The legal assistance sector does not currently have the capacity to meet the consistently high levels of critical legal need in the areas of family law and family violence. As a result of limited funding, Community Legal Centres nationally turned away more than 350,000 people in 2022-23¹¹ leading to large numbers of people having to self-represent. Approximately 20 per cent of all family law applications are heard without legal representation¹² and self-represented litigants are a feature of about half of all family law trials.¹³ These families are required to navigate complicated systems alone without the necessary information and guidance, and in cases of family violence in circumstances of heightened risk.

Family law assistance comes at a high cost which many families cannot afford. It is critical that there is increased funding to the legal assistance sector to ensure access to legal representation for families experiencing disadvantage who are navigating the family law system. This includes additional investment to allow for greater access to lawyer-assisted family dispute resolution to avoid protracted and complex litigation, including in matters involving family violence.

As part of this, we are calling for increased guaranteed baseline funding to the community legal sector under the arrangements to replace the current NLAP, which concludes on 30 June 2025, in line with the NLAP Review Report.¹⁴ We also support the expansion of the FASS, which is an integrated duty lawyer and social worker service for people impacted by family violence with family law issues. In Victoria, FASS is delivered by Community Legal Centres and Victoria Legal Aid.

⁶ Women's Legal Service Australia, *Submission to the Inquiry into Family Violence Orders* 2024

⁷ Victoria Legal Aid *Submission to the Commonwealth Inquiry into family, domestic and sexual violence* 2020 p.26.

⁸ Victoria Legal Aid, *A safe, accessible and inclusive family law system* 2023

⁹ National Legal Aid, *The benefits of providing access to justice* 2023 p.8 Courts have acknowledged that matters with at least one self-represented litigant take 20 per cent longer to resolve on average.

¹⁰ *ibid* p.14

¹¹ Community Legal Centres Australia, *State of the Sector 2022-23 survey report: A sector in crisis* 2024

¹² Australian Institute of Family Studies, *Review of the family law system: Submission from the Australian Institute of Family Studies*, 2019 p.9

¹³ Victoria Legal Aid, *The next National Plan for the prevention of violence against women and their children. Submission to consultations* 2021

¹⁴ *ibid*. n10

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There is a need for greater funding in other parts of the family law system, particularly for ICLs and Indigenous Liaison Officers in each registry, as well as for funding for interpreters to enable people from migrant and refugee communities to access legal assistance in language.

Providing holistic legal support

Victim survivors of family violence often have interrelated legal issues in addition to family law problems, such as securing FVOs, child protection intervention, migration issues for women on temporary visas or asylum seekers and housing and debt issues.

Family violence is a key driver of legal need and can result in victim survivors having multiple and compounding legal issues. A study by the Law and Justice Foundation of NSW shows that victim survivors experience on average 20 different legal problems compared with an average of two legal problems experienced by the general population.¹⁵ These legal issues are often complex, distressing and have profound implications for the affected individual, their children and family.

The vast majority of Community Legal Centres (75 per cent) provide legal assistance to victim survivors of family violence. However, Community Legal Centres are not sufficiently resourced to meet the high levels of legal need in family violence. It is important that there is an uplift in resourcing to Community Legal Centres to assist victim survivors of family violence with their family law issues, obtaining FVOs and other interrelated legal problems. This recognises that these legal areas are interconnected and mutually reinforcing in increasing safety and access to FVOs.

Recommendation 1: Expand access to family law assistance for victim survivors of family violence and families experiencing disadvantage. This includes an increase in baseline guaranteed funding under future NLAP agreements for the community legal sector and expansion of the FASS.

Recommendation 2: Provide additional investment to the community legal sector to increase capacity to provide legal assistance in matters involving family violence.

Enhancing family violence reforms

Family violence risk assessment, triage and case management in family law proceedings

We welcome the recent family violence-related reforms which focus on strengthening family violence risk assessment, triage and case management in family law proceedings, as well as the expansion of the Evatt List and the Lighthouse project to additional FCFCoA registries. These case management processes are important in identifying family violence and obtaining relevant evidence early in family law proceedings to manage high risk family violence matters.¹⁶

In line with WLSA, we highlight the importance of ongoing monitoring and evaluation to assess the impact and effectiveness of the Lighthouse's family violence risk assessment, triage and case management processes.¹⁷ WLSA highlighted in its submission that a large proportion of clients are not undertaking the triage tool for Lighthouse (Family DOORS Triage Questionnaire) as it is only in English

¹⁵ Coumarelos, C. 'Quantifying the legal and broader life impacts of domestic and family violence' in Justice Issues, Paper 32, The Law and Justice Foundation of New South Wales 2019

¹⁶ Women's Legal Services Australia, Submission to the Inquiry into Family Violence Orders, July 2024.

¹⁷ *ibid.*

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and available online.¹⁸ This limits its accessibility for people with limited English, low digital literacy or limited digital access or for people with a disability. We support WLSA's recommendation to improve the accessibility of the triage tool.¹⁹

While there are risk assessment and management processes for high-risk family violence matters within the family law system, there is insufficient FCFCoA capacity to expedite and prioritise all high-risk matters, requiring increased resourcing.

Family violence training and education for judicial officers and legal professionals

It is important that there is ongoing family violence education for judicial officers and legal practitioners that work in family law and family violence legal settings to ensure that family violence risks receive sufficient scrutiny and are properly considered as part of the legal process.

Community Legal Centres assisting clients with family law and FVO matters in the federal and state jurisdiction have observed judicial practices that are not family violence or trauma informed, leading to family violence being dismissed or minimised. The proper identification, assessment and management of family violence requires an in-depth understanding of the dynamics and complexities of family violence. A lack of knowledge and understanding of family violence can lead to a minimisation of family violence and inadequate responses by courts.

Where legal practitioners do not have the skills and knowledge to identify and respond in a trauma informed and effective way to family violence, this can result in flawed legal and safety outcomes for victim survivors.²⁰

It is important that legal practitioners working with people who use violence undertake training around how to ensure they do not collude with their clients. Collusion is when individuals, organisations or the service system act in ways that reinforce, support, excuse or minimise a person's use of family violence and its impacts. Collusion can be verbal, such as agreeing with violence supporting narratives, or non-verbal such as, smiling or nodding in a way that seems encouraging to the behaviours. People who use violence frequently invite others to collude through seeking agreement, sympathy or alignment with their narrative. The impacts of collusion can strengthen and/or reinforce the ways that a perpetrator minimises or denies responsibility for their behaviour, thereby making it less likely they will stop their use of violence.²¹ Collusion by a legal representative allows a person who uses violence to call on the authority of the legal representative to support their position and can enable them to further use the legal system to perpetrate abuse.

There have been consistent calls for compulsory training and regular professional development on the nature and dynamics of family violence for all professionals working in the family law and family violence legal settings.²² Training should be designed and delivered by subject matter experts and

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ WLSA *Response to Discussion Paper: Continuing Professional Development for Legal Practitioners on Coercive Control*, 2023.

²¹ MARAM Foundation knowledge guide *Guidance for professionals working with child or adult victim survivors, and adults using family violence* p. 47.

²² Un Report - compulsory judicial training on domestic violence, including its impact on children. CEDAW/C/ESP/CO/7-8, paras. 38–39, CEDAW/C/RUS/CO/8, para. 46 (c), CEDAW/C/CAN/CO/8-9, para. 57, and CEDAW/C/SWE/10, para. 46 (a).

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people with lived experience and evaluated for its effectiveness.²³ It should occur regularly, as one-off training is unlikely to be as impactful. It should cover a range of areas, including the nature and dynamics of family violence, trauma-informed practice, effective responses and support options available for victim survivors and intersecting areas (such as, child protection, migration, family law and family violence). It is also important that this includes a cultural competency component in relation to working with First Nations families and families from migrant and refugee backgrounds.²⁴ We also recommend that avoidance of collusion when working with people who use family violence is incorporated into the ethical requirements for legal practitioners.

Recommendation 3: Strengthen the FCFCoA's risk assessment, triage and case management processes through:

- a. ongoing monitoring and evaluation of the Lighthouse project;
- b. improving the accessibility and useability of the Lighthouse triage tool (Family DOORS Triage Questionnaire), including for people with limited English, low digital literacy and limited access and people with a disability; and
- c. increasing the capacity of the FCFCoA to expedite urgent and high-risk family violence matters.

Recommendation 4: Improve understanding of family violence by:

- a. implementing ongoing and comprehensive family violence education nationally for judicial officers and legal practitioners that work in family law and family violence legal settings;
- b. introducing compulsory CPD requirement for family violence education; and
- c. incorporating avoidance of collusion with clients who use family violence as part of legal ethical CPD requirements.

Addressing systems abuse

Systems abuse is a particular form of violence perpetrated during family law and other legal proceedings. Systems abuse involves people who use violence manipulating legal and administrative systems to exert control over, threaten or harass a current or former partner.²⁵ In a family law context, systems abuse can take the form of spurious or vexatious applications intended to disrupt, defer, or prolong legal proceedings, resulting in a depletion of the victim survivor's financial resources and emotional wellbeing.²⁶ The legal system can become a key enabler of systems abuse, which can have a serious negative impact on the ability of victim survivors to secure protection through FVOs and establish safe parenting arrangements.

We welcome the introduction of harmful proceedings orders to strengthen protections against vexatious and harmful family law applications. It is too early to assess the efficacy of these reforms in

²³ WLSA *Exposure Draft of the Family Law Amendment Bill (No.2)* 2023 p.4.

²⁴ WLSA submission to House of Representatives Committee 2017, Attachment A, WLSA submission to the Australian Law Reform Commission's Issues Paper on the Review of the Family Law System, 2018, page 41.

²⁵ Kaspiw, Rae, et al, '*Evaluation of the 2012 Family Violence Amendments*' (Synthesis Report, Australian Institute of Family Studies, 2015)

²⁶ Commonwealth of Australia (Department of Social Services) *National Plan to End Violence Against Women and Children 2022-2032*

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reducing systems abuse. However, we support a continued focus on addressing systems abuse in the family law and FVO system.

Parental alienation

Whilst systems abuse takes place in many forms, the approach to allegations of parental alienation remains a concerning and widespread tactic. The UN Report on parental alienation, described claims of parental alienation as a “discredited and unscientific pseudo-concept.”²⁷ However, an allegation of parental alienation is a tool that continues to be employed by people who use violence to continue to abuse and discredit allegations of family violence in family law proceedings.²⁸ Where legal representatives and judicial officers lend credibility to these allegations, this can deter victim survivors from raising family violence concerns and obtaining FVOs and/or protective parenting orders.²⁹

Misidentification

A further tactic employed by people who use violence involves the making of unfounded cross-allegations of family violence against victim survivors. Victim survivors who have been misidentified face significant barriers within both family violence and family law courts in obtaining the protection they require to stay safe. Whilst this occurs most frequently in the family violence system – particularly as a result of police misidentifying victim survivors as the perpetrator of family violence – the judiciary and legal representatives in family law courts need to be skilled in identifying family violence and misidentification where it has occurred.³⁰ More effective policies and procedures for prevention and rectification of misidentification during family law proceedings, as well as within the FVO system, needs to be implemented.

Recommendation 5: Maintain an ongoing focus on addressing systems abuse within the family law and FVO systems. This includes considering recommendations of the recent UN Report on parental alienation and its applicability to the family law system in Australia.

Recommendation 6: Implement effective policies and procedures to prevent and rectify misidentification of victim survivors as the perpetrator of family violence during family law proceedings, as well as within the FVO system.

²⁷ Alsalem, R., A/HRC/53/56, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences* – Custody, violence against women and violence against children, April 2023.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Family Violence Reform Implementation Monitor *Monitoring Victoria’s family violence reforms Accurate identification of the predominant aggressor* 2021

SECTION 2: BARRIERS TO OBTAINING AND ENFORCING FAMILY VIOLENCE ORDERS

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Terms of Reference 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*
- b. the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO*

Navigating multiple courts

FVOs come within the jurisdiction of State and Territory Courts while parenting orders fall under the jurisdiction of the FCFCoA. Parenting orders will generally override any inconsistent obligation under a FVO that was made by a State or Territory Court.

In parenting matters where family violence is being perpetrated, victim survivors are required to navigate both the State or Territory Court and FCFCoA. This complexity between the family violence and family law system is well-documented,³¹ as are the difficulties faced by families, in particular victim survivors of family violence, in safely and effectively navigating these complex and fragmented systems. As has been observed the family violence and family law jurisdictions were not designed as one system and do not always operate coherently.³² This fragmentation can place already exposed parents and children at further risk.³³

State and Territory Courts should remain the primary jurisdiction for seeking FVOs

We consider that State and Territory Courts should be the primary jurisdiction for victim survivors of family violence to seek FVOs. State and Territory Courts have built up the relevant experience and processes and are more accessible, less formal and quicker than the FCFCoA - this allows protections to be more swiftly obtained. In addition, state and territory police are better placed and resourced to enforce FVOs.

While a system of federal FVOs granted by the FCFCoA would potentially enable victim survivors involved in family law proceedings to access protection from a single court rather than navigating a different court system at the state or territory level, this could result in additional complexity. This could lead to uncertainty around the appropriate jurisdiction, challenges with enforcement of federal FVOs and additional opportunities for forum shopping and systems abuse by people who use violence.

³¹ Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* 2019

³² Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* 2001

³³ [Royal Commission into Family Violence: Report and recommendations](#), State of Victoria Vol IV. Parl Paper No 132.Ch 24.

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In the event that federal FVOs are being considered, we recommend further consultation on the specific nature of any proposals and consideration of the following factors:

- complexity and interplay between state, territory and federal orders and jurisdictions;
- effectiveness of federal FVOs, and the ability to actualise the aim of preventing families navigating multiple courts;
- appropriateness of federal FVOs where the matter is urgent;
- the capacity to grant interim federal FVOs, the duration of a federal FVO and how this would be varied or revoked once a family law matter has ended;
- concerns of systems abuse, misidentification and forum shopping;
- workload, resourcing and training implications for FCFCoA judges and police;
- role and resourcing for ICLs and legal practitioners to assist with applications for federal FVOs;
- accessibility of federal FVOs for applicants based in regional and remote areas;
- enforcement complications, including legislative changes and resourcing and training to enable state and territory police enforcement.

State and Territory Courts exercising family law jurisdiction

As noted above, parenting orders generally override FVOs. However, State and Territory Courts have delegated powers to change, suspend or discharge parenting orders when making (or varying) a later FVO. The Family Law Act (section 68R) provides that to prioritise safety, State and Territory Courts may vary, suspend or discharge an existing parenting order where it has “spend time” arrangements with a parent which are inconsistent with the FVO. This power is inconsistently applied, and State and Territory Courts can be reluctant to grapple with these provisions.

There are differing views on the best approach to State and Territory Courts exercising family law jurisdiction under section 68R. The Australian Law Reform Commission (ALRC) made several recommendations about elevating the powers under section 68R, including recommendations:

- to include a requirement for judicial officers to consider varying, suspending or discharging an inconsistent parenting order under section 68R when making or varying an FVO.³⁴
- to include an option for an applicant to request the court to vary, suspend or discharge a parenting order in FVO application forms, as well as to indicate their preference that there should be no exception in the FVO for arrangements under a parenting order.³⁵
- requiring State and Territory Courts to not significantly diminish the protection of an FVO to ensure consistency with a parenting order.³⁶
- for further education of judicial officers and legal practitioners to improve understanding of the exercise of family law jurisdiction by State and Territory Courts where there is an inconsistent parenting order and FVO, as well as developing ancillary guidance and resources.³⁷

The ALRC makes valuable recommendations to strengthen the consistent use of section 68R by State and Territory Courts to prioritise the safety of victim survivors. Consistent and appropriate use of section 68R will enable victim survivors to seek urgent protection from State and Territory Courts where

³⁴ Australian Law Reform Commission, *Family Violence: a National Response (ALRC Report 114)*, 2010, Recommendation 16-1, p.28.

³⁵ *ibid* 16-2 and 16-7, p.28.

³⁶ *ibid* 16-6, p.28

³⁷ *ibid* 16-8 and 16-9, p.29.

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there is an escalation of violence which makes existing parenting orders unsafe without risking a contravention order in the FCFCoA for non-compliance.

However, a careful balance must be struck to ensure that section 68R is not misapplied through a lack of understanding of the purpose of these powers and/or the dynamics of family violence. As recommended by the ALRC, it is important that there is capacity building among judicial officers and legal practitioners on the appropriate use of family law jurisdiction under section 68R. This is particularly important to safeguard against systems abuse by people who use violence to unsettle existing parenting arrangements or the use of section 68R as a tool to undermine or devalue final parenting orders. This acknowledges that there may be an extensive and complex history in the family law proceedings which is not before the State and Territory Court considering the matter.

Recommendation 7: Implement a consistent approach to the exercise of family law jurisdiction by State and Territory Courts under section 68R of the Family Law Act to prioritise safety of victim survivors in need of protection.

Recommendation 8: Build the capacity of judicial officers and legal practitioners in the appropriate application of family law jurisdiction by State and Territory Courts under section 68R of the Family Law Act and develop ancillary guidelines and resources.

Other key reforms

There is no single solution to the difficulties experienced by victim survivors resulting from the need to navigate multiple courts: what is required is a multi-faceted approach to create cohesion, consistency and communication between court systems. Victim survivor safety should be the priority at all stages and within all areas of proceedings, and the journey through litigation should be seamless and secure.

Strengthening information sharing

We acknowledge the recent reforms enacted through the *Family Law Amendment (Information Sharing) Act 2023* (Cth) which are aimed at “ensuring the courts have access to a holistic picture of family safety risk in order to prioritise the safety of children and families, particularly in circumstances where there is risk of child abuse, neglect or family violence”.³⁸ As these changes have recently commenced, it is not yet possible to assess their efficacy. To ensure the effective implementation of this information sharing regime, there should be appropriate training the judiciary and legal practitioners.

However, these powers do not resolve the crucial requirement for wider information sharing across relevant sectors in real time. Increased information sharing across key organisations and services outside of courts is required to assess and manage risk, and to provide timely and safer outcomes.

We support WLSA’s call for the Commonwealth, State and Territory Governments to implement a national risk information sharing scheme and register to “increase transparency, accountability and information sharing across the sector”.³⁹ This could include FCFCoA orders, FVOs and other relevant

³⁸The Hon Mark Dreyfus KC MP, ‘[Landmark Family Law Act reforms come into effect](#)’ Media Release, 6 May 2024

³⁹ WLSA submission to the Standing Committee on Social Policy and Legal Affairs inquiry into family violence orders 2024

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risk related information.⁴⁰ As outlined by WLSA, this scheme could be based on the Victorian Family Violence Information Sharing Scheme. It is important that there are appropriate safeguards in place to guard against any risks associated with information sharing. There needs to be an overarching focus on the agency and safety of victim survivors and implementation of best practice. This includes robust processes for obtaining the informed consent of victim survivors.⁴¹

Cross-jurisdictional knowledge

To support the seamless journey for victim survivors through both State and Territory Courts and FCFCoA, there needs to be an ongoing approach to upskilling and capacity building within the judiciary to increase understanding of family law and FVO processes. There must be fundamental shared understandings about family law and FVO processes across both systems. Where a lack of shared knowledge exists, judicial officers may not grapple with necessary elements of the alternative processes, even where jurisdiction permits. Any significant lack of comprehension has the potential to widen the jurisdictional gap between proceedings and reduces the likelihood of cohesion across linked matters.

Similarly, a strengthening of cross-jurisdictional fundamentals for all legal practitioners working within each legal arena is important. This will allow for practitioners to better support clients traversing both FVO and family law proceedings and ensure that advice provided does not contradict issues or advice in parallel proceedings.

Recommendation 9: In line with WLSA's submission, Commonwealth, State and Territory Governments implement a national risk information sharing scheme and register, including FCFCoA orders, FVOs and other information relevant to risk, with appropriate safeguards.

Recommendation 10: Expand capacity building and upskilling to deepen cross-jurisdictional knowledge of the family law and FVO systems for both the judiciary and legal practitioners working in each jurisdiction.

Wrap-around support and safety measures

Terms of Reference 2:

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

Expanding the availability of wrap-around supports

The availability of wrap-around legal and other supports for victim survivors in family law proceedings is critical. Victim survivors require additional support and measures throughout proceedings to prioritise safety and wellbeing. The FASS combines free legal advice and support at the FCFCoA for people impacted by family violence. As noted above, this program needs to be further expanded to meet demand for family violence support for victim survivors navigating the family law system.

As highlighted by WLSA, FASS and other in-person supports have limited availability for people appearing online at their court event.⁴² The mode of appearance should not determine the supports

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² *ibid*

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available to victim survivors, recognising that online appearances may be a victim survivor's preference and may be easier and safer. There should still be access to FASS and other supports for victim survivors appearing online. For example, as highlighted by WSLA, in the Indigenous List, there is access to support services, such as FASS, for online and telephone court events and in Sydney, judicial officers can request court staff to make warm referrals to duty solicitors for legal advice.⁴³ Indigenous Family Liaison Officers are available to provide wrap-around supports, including attendance at court events, such as court-based dispute resolution.⁴⁴

Ongoing holistic support

Victim survivors engaging in family law proceedings require holistic and long-term family violence support rather than siloed, fragmented and intermittent responses. However, due to the lengthy nature of family law proceedings, there is often limited access to ongoing family violence social work support. We suggest holistic support where legal professionals and family violence practitioners operate collaboratively to support victim survivors throughout the duration of their family law proceedings. This would include assistance with safety planning, therapeutic options and other practical assistance, such as with housing and social security.

This would ensure that the psychological and legal needs of victim survivors are identified early and supported. The expanded availability of family violence practitioners would increase the safety of families through risk management, emotional support, and guidance.

While the focus has been on the FCFCoA, we also support the increased availability of wrap-around legal and family violence supports at State and Territory Courts. In Victoria, the level of support available is court dependent. While some Specialist Family Violence Courts have additional legal and other supports available, other courts are not as well resourced. This leads to a 'postcode lottery' with varying access to services depending on where a person lives. We consider that there should be available legal and other wrap-around supports for parties involved in family violence matters regardless of where they live.

Improving safety measures at court

The availability of safety measures at the FCFCoA and State and Territory Courts for victim survivors varies depending on the court. For example, in Victoria, Specialist Family Violence Courts have been or are in the process of being upgraded to introduce new safety measures, such as separate entrances and safe waiting rooms for victim survivors. These changes are welcomed, and we support ongoing investment in safety measures across FCFCoA registries and Magistrates' Courts in Victoria.

It is also important for court staff or other support workers at court to have the requisite knowledge of safety features at court to assist victim survivors with safety planning where they are appearing in-person. For self-represented litigants, there needs to be clear communication and signage so they are made aware of the safety measures and assistance available.

Recommendation 11: Increase investment in ongoing wrap-around legal and family violence support for victim survivors involved in family law and FVO proceedings at the federal, state and territory level, including expanding the FASS and options for wrap-around support for parties appearing online.

⁴³ *ibid*

⁴⁴ *ibid*

SECTION 2: BARRIERS TO OBTAINING AND ENFORCING FAMILY VIOLENCE ORDERS

Recommendation 12: Expand access to safety features across State and Territory Courts and FCFCoA registries for victim survivors of family violence, including (but not limited to) separate entrances and waiting rooms.

SECTION 3: INCREASING ACCESSIBILITY TO FAMILY VIOLENCE ORDERS

SECTION 3: INCREASING ACCESSIBILITY TO FAMILY VIOLENCE ORDERS

Improving accessibility of FVOs

Terms of Reference 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*
- 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*

Accessibility and co-location

We support State and Territory Courts remaining the primary jurisdiction for seeking FVOs. We do not consider that co-location arrangements allowing for an application or enforcement of an FVO to be heard at the same physical location as the FCFCoA would markedly enhance accessibility of FVOs for victim survivors navigating the family law system. There are more State and Territory Courts across each jurisdiction than FCFCoA registries and they are generally more accessible. Further, given remote hearing options available, parties may not necessarily be attending court in-person.

As highlighted above, we consider that to improve the accessibility of FVOs in the family law system, the focus should be on:

- strengthening real time information sharing frameworks;
- improving cross jurisdictional knowledge of family law and FVO systems among judicial officers and legal practitioners; and
- implementing a more consistent approach to the appropriate exercise of family law jurisdiction by State and Territory Courts under section 68R of the Family Law Act.

Greater uniformity of FVO laws nationally

FVO processes and definitions vary significantly across different jurisdictions. Accessibility to FVOs could be improved by introducing greater harmonisation of family violence legislation nationally. The lack of a consistent and inclusive definition of family violence in Australian legislation has broad implications, including cross-border enforcement complications and policy and practice impacts within proceedings. In addition, the lack of uniformity has consequences for the legal protections and supports available, including in relation to FVOs. The various state and territory definitions may apply in ways that exclude some family violence circumstances, forms of abuse and/or relationships thus creating disparity in the availability of legal protection.

We support the calls in the National Plan to End Violence Against Women and Children 2022-2032, and the ALRC Reports for 2010 and 2019⁴⁵ for nationally consistent definitions of family violence.

⁴⁵ Australian Law Reform Commission, *Family Violence: a National Response (ALRC Report 114)*, 2010; Australian Law Reform Commission, *Family Law for the Future: An Inquiry into the Family Law System (ALRC Report 135)*, 2019.

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The Law Council of Australia released the Model Definition of ‘Family Violence’.⁴⁶ This addresses the range of relationships in which family violence occurs and recognises that First Nations and culturally and linguistically diverse communities may have a wider concept of family. It describes a broad range of conduct considered family violence and includes disability-specific examples of violence and abuse (which is addressed in more detail in Section 4 below).

Family violence legislation and processes in each state and territory also vary significantly, including the FVO application process, FVO conditions, the duration of FVOs and the court process. These differences can make it difficult for victim survivors to navigate different court systems, particularly where they live in a cross-border area or move across different jurisdictions. There would be benefits to greater harmonisation of family violence legislation nationally.

Recommendation 13: Strengthen consistency of family violence legislation nationally, including by implementing a consistent definition of family violence.

Early and holistic legal and other support

Terms of Reference 3:

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

As highlighted in Section 1 above, it is critical that there is increased investment in early and holistic legal and other supports to promote early identification and effective responses to family violence. Evidence indicates that there is a strong correlation between victimisation and legal need.⁴⁷ Studies (including by RMIT University’s Centre for Innovative Justice) have identified that victim survivors often have a wide range of unmet legal needs, which can snowball if not addressed.⁴⁸ Research has shown that access to legal advice at an early stage can reduce escalation of legal issues and have a ‘preventative effect’ in terms of minimising compounding harms for people experiencing vulnerability.⁴⁹

Early and holistic support for victim survivors includes access to legal assistance with family law (i.e., parenting arrangements and/or property divisions) and family violence (i.e., obtaining an FVO), as well as a range of other interrelated matters, such as:

- migration advice (e.g., for victim survivor’s dependent on an abusive partner’s visa or those seeking protection in Australia as a family group)
- employment advice (e.g., due to work disruptions, leave and other entitlements)
- tenancy assistance (e.g., where there is a joint lease with an abusive partner)
- victims of crime assistance

⁴⁶ Law Council of Australia, [Model Definition of ‘Family Violence’](#) 2021

⁴⁷ Centre for Innovative Justice, RMIT University, [Strengthening Victoria’s Victim Support System: Victim Services Review - Final Report](#), November 2020, p.149.

⁴⁸ Ibid, p.17.

⁴⁹ Ibid. p.149.

SECTION 3: INCREASING ACCESSIBILITY TO FAMILY VIOLENCE ORDERS

- criminal law processes (including police reporting, prosecution and restorative justice options).

Holistic and early support also involves family violence support with safety planning, therapeutic support and other practical support to address immediate material needs, such as housing, childcare and financial assistance.

Service systems can be disconnected and difficult to navigate, particularly for someone who is overwhelmed and is experiencing distress and trauma. It is important that a victim-centred approach is taken where services wrap-around the victim survivor. This requires increased collaboration between multidisciplinary services, including legal, family violence, sexual violence, mental health, housing and community sectors, and increased resourcing from governments to strengthen collaboration.

Community Legal Centres are experienced in providing holistic and trauma-informed integrated legal services to victim survivors and have been at the forefront of developing best practice integrated legal models.⁵⁰ Many Community Legal Centres have integrated legal practice models consisting of lawyers and community service professionals within their legal service, such as family violence practitioners, social workers, financial counsellors and First Nations liaison officers. Community Legal Centres also operate in partnership with a range of community organisations that assist victim survivors, such as family violence services, sexual assault services, health centres, schools and community hubs.⁵¹ This helps people to understand and identify their legal need earlier, reach people before their legal issues escalate and provide more wrap-around support. This multi-disciplinary support model reduces the need for victim survivors to re-tell their stories to multiple service providers, reducing the risk of re-traumatisation. Community Legal Centres are uniquely placed to deliver early and holistic legal services to victim survivors experiencing family violence with family law issues.

Recommendation 14: Increase availability of early and holistic legal and other supports for victim survivors with family law issues through increased investment in Community Legal Centres integrated legal programs.

⁵⁰ See, for example, Eastern Community Legal Centre, *Integrated Practice: Better Practice Principles*.

⁵¹ Federation of Community Legal Centres, *Meeting People Where They Are: Delivering Integrated Community Legal Services*, June 2020, p 10.

SECTION 4: ANY OTHER REFORMS TO ENHANCE SAFETY

SECTION 4: ANY OTHER REFORMS TO ENHANCE SAFETY

Terms of Reference 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 FVOs.

Children's views in family law proceedings

Children and young people are victim survivors of family violence in their own right and can experience family violence directly or indirectly. Family law processes and decisions can have devastating impacts for children and their welfare, particularly where their wishes and feelings are not heard or acknowledged. It is important for the family law system to provide mechanisms for children's voices to be heard and considered as part of decision-making processes in a way that is safe and child-centred in line with Article 12 of the UN Convention on the Rights of the Child.

We welcome the recent family law reforms requiring ICLs to meet with children and provide them with an opportunity to express their views (unless an exception applies). There should be robust monitoring and evaluation to assess the efficacy of these reforms in ensuring that children's views and best interests are put before the court. Where an ICL is not appointed and the representation of the child's view in a family report is inadequate, the court should consider other avenues for understanding the views of the child in a safe and child-centred way.

Recommendation 15: Assess the effectiveness of the recent family law reforms concerning ICLs in ensuring that children's views and best interests are put before the court.

Recommendation 16: Where an ICL is not appointed or the family report is insufficient, implement additional safe and child-centred options for children to express their wishes and feelings in family law proceedings.

Improving the FVO system for people with a disability

Twenty-eight per cent of women with disability experience violence by family members since age 15. This is higher than men with disability (17 per cent) and women without disability (18 per cent).⁵² Further, 27 per cent of clients served by Community Legal Centres in Victoria reported to be living with a disability.⁵³ The intersection of family violence, requirement for legal assistance and disability is considerable.

⁵² Australian Bureau of Statistics, Microdata: [Personal Safety Survey](#), 2016.

⁵³ Federation of Community Legal Centres (Vic) [Annual Report](#) (2022-2023) p. 25.

SECTION 4: ANY OTHER REFORMS TO ENHANCE SAFETY

Victim survivors with disability face additional barriers to seeking and obtaining legal protection, including alarming rates of being misidentified as a perpetrator of abuse.⁵⁴ Furthermore, people with disability face additional challenges leaving a violent relationship if they depend on a partner for care or parenting support, and their social isolation makes it difficult to seek help.⁵⁵ People with disability need additional support to report violence, partly because they are more likely to be disbelieved or dismissed, especially if they have an intellectual disability.⁵⁶

In addition, not all legislative definitions of family violence cover the relationships people with disability may have, including relationships with support workers, co-residents, other staff of services, and guardians and administrators.⁵⁷ Particular forms of violence and abuse may be perpetrated against people with disability that target their disability-related needs or exploit negative attitudes toward people with disability. These specific forms of violence are rarely expressly mentioned in family violence legislation and definitions.⁵⁸

Where a person with disability experiences violence or abuse in a relationship or setting that does not constitute family violence in a particular jurisdiction, they may not be eligible for a FVO or its equivalent. Instead, they will be reliant on a personal protection order, which may be more difficult to access, and if it is granted, sometimes provides less protection and support.

We recommend, directly engaging with women and girls with disability to address effectively the issues raised about legal responses to family violence against people with a disability. Created by lived experience advocates, there should be additional training for judicial officers and legal practitioners incorporating specific content about the prevalence of family violence against people with a disability, the higher rates of violence, differing offending patterns, and differences in the nature and severity of the violence perpetrated.⁵⁹

As outlined above, a shared definition of family violence which is inclusive of forms of family violence specific to people with a disability would ensure more effective responses and access to supports and FVOs.⁶⁰

Recommendation 17: Improve access to the FVO system for people with disability and understanding of the unique family violence dynamics and prevalence for people with a disability.

Protecting animals in the family violence context

Animal cruelty is an insidious form of family violence. Victim survivors will often delay leaving an abusive relationship due to fear or threat that their animals will be harmed and due to the absence of

⁵⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Criminal justice and people with a disability* Final Report, Volume 8 2023 p. 264.

⁵⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Violence and Abuse of People with Disability at Home* Issues Paper, 2020 p. 3-5.

⁵⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Criminal justice and people with a disability* Final Report, Volume 8 2023 p. 219

⁵⁷ Ibid.

⁵⁸ Ibid p.310.

⁵⁹ Ibid p. 271.

⁶⁰ Ibid. p276.

SECTION 4: ANY OTHER REFORMS TO ENHANCE SAFETY

services to support people with animals experiencing family violence. This includes limited care options available for animals where victim survivors are accessing short, medium term or crisis accommodation.

Properly recognising animal abuse in FVO legislation

FVO legislation does not adequately recognise animal abuse as a form of family violence or provide specific protection for animals. FVO legislation also fails to acknowledge the importance of animals to families and their sentience and ability to feel pain. In line with WSLA, we ask that there is a national approach to animal abuse as a form of family violence, and reforms to FVO legislation in each jurisdiction to improve the safety of victim survivors and their animals.⁶¹

For example, Victoria is one of the jurisdictions that recognises physical harm against animals (including, threats, injury or death) as a form of family violence. Other forms of abuse against animals should be recognised in addition to physical violence, such as:

- threatening or causing the selling, removal, abandonment or giving away of animals
- coercing the victim survivor to put down an animal
- intentional neglect of animals (i.e., to punish or control a victim survivor).

Specific protection for animals in FVOs

There should be mechanisms in FVO legislation to afford specific protection for animals in FVOs. The protections that could apply include:

- mandating that the respondent not commit family violence against the animal
- restraining the respondent from coming within proximity of the animal
- providing for the transfer or return of the animal to the protected person (or a nominated responsible person).

To make these conditions effective, State and Territory Courts should have the power to make orders for the transfer of the animal's registration to the protected person (or a nominated responsible person).

In line with WLSA, we consider that the safety of animals would be most effectively addressed by state and territory FVO legislation in a family violence context, rather than longer and more complex FCFCoA processes where 'ownership' of animals may be dealt with as part of a property division.⁶²

Education and training

Furthermore, we suggest increased resources and education on:

- animal abuse in the family violence context (e.g., the dynamics of abuse of animals as part of coercive control)
- the action that can be taken where animals are affected by family violence (for example, safety planning and risk assessments, available support, referral options and legislative protections).

⁶¹ WLSA submission to the Standing Committee on Social Policy and Legal Affairs inquiry into family violence orders 2024.

⁶² *ibid.*

SECTION 4: ANY OTHER REFORMS TO ENHANCE SAFETY

Recommendation 18: Implement nationally consistent reforms to FVO legislation to strengthen the protection of animals impacted by family violence, including:

- a. recognising animal abuse as a form of family violence;
- b. providing specific protection of animals in FVOs; and
- c. vesting State and Territory Courts with the power to order the transfer or return of an animal and transfer of registration.