



19 July 2024

Ms Susan Templeman MP
Chair
House of Representatives Standing Committee on Social Policy and Legal Affairs
spla.reps@aph.gov.au

Dear Ms Templeman,

RE: Inquiry into family violence orders

Hume Riverina Community Legal Service (HRCLS) is pleased to provide a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into access to family violence orders (FVOs) for victim survivors in the family law system.

Introduction

HRCLS is a service of Upper Murray Family Care (UMFC). UMFC is a community service organisation supporting children and families in their time of need throughout North East Victoria and Southern New South Wales.

HRCLS has been providing legal assistance, building community capacity, and removing barriers to justice for people across North East Victoria and the Southern Riverina of New South Wales for almost 25 years. We are a place-based, generalist community legal centre.

HRCLS is committed to growing access to justice in our region and in 2022-23 assisted over 1,300 clients experiencing intersecting disadvantage. We partner with community service organisations and education and health providers in integrated health justice partnerships to provide holistic support to people experiencing legal problems in a range of areas, including family violence.

In 2022-23 over 65% of our clients identified as experiencing or at risk of family violence, and we provided legal assistance in 757 family violence matters.

HRCLS provides legal assistance in four integrated health justice partnerships developed to address family violence in our region:

- Integrated family violence partnership with Centre Against Violence (CAV) in North East Victoria



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- The Invisible Hurdles Program, an integrated youth justice initiative in partnership with youth homelessness service NESAY, education provider Wodonga Flexible Learning Centre, and Albury Wodonga Aboriginal Health Service
- Health justice partnership with Women's Centre for Health and Wellbeing in Albury
- Outreach, Networking and Empowerment (ONE) Program, a health justice partnership with Women's Domestic Violence Court Advocacy Services (WDVCAS) across the Southern Riverina of NSW

In addition to these programs that were developed specifically to respond to family violence in our region, the legal needs of victim survivors are supported across all HRCLS partnerships and programs.

HRCLS makes the following recommendations to the inquiry, in line with the terms of reference, for the provision of better access for victim-survivors in the family law system to FVOs, the effective enforcement of those orders, and the supports needed:

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.

It is the experience of HRCLS that family law proceedings increase the risk of an escalation in family violence.

In the integrated family violence partnership with Centre Against Violence (CAV), HRCLS seeks to deliver critical, early and targeted legal assistance to victim survivors of family violence. The partnership enables the provision of legal assistance to victim survivors earlier than otherwise possible, and enables holistic, trauma informed support for victim survivors.

This partnership is effective in providing wrap around support to victim survivors with the knowledge that family law proceedings often cause an escalation in the behaviour of family violence perpetrators posing risk to victim survivors and their children. The following two case studies are examples of this:

Annie separated from her partner after a [REDACTED] relationship during which they had one child together. A year before the separation in response to a family violence incident police applied for a family violence order against Annie's partner. Annie did not want the order. The family violence being perpetrated against Annie included significant coercive control.

[REDACTED] connected with CAV Annie sought an order variation to a full order that protected herself and her young child. Annie with the assistance of HRCLS then began family law proceedings for both parenting and property.

The behaviour of Annie's ex-partner escalated during the family law process. He actively frustrated family law proceedings and breached the protective order multiple times.

Annie applied for extensions of the protective order throughout the duration of the family law proceedings.

In addition to the coercive, threatening and violent behaviour of Annie's ex-partner during family law proceedings, Annie found police conduct towards her degrading and devaluing. Annie lived in a small regional town and the police often failed to investigate Annie's reports of breaches of the family violence order by her ex-partner referring to them as 'family law matters'.

Cassandra's family law parenting and property proceedings took over five years. Throughout this protracted period Cassandra enacted her safety plan prior to, and following, each hearing due to escalated risk of aggressive and violent behaviour of her ex-husband and the heightened risk to her, and her children's, safety.

FVO proceedings during this period took place in the town Cassandra lived, bringing her ex-husband back to the town. He used these opportunities to find where she was residing to continue perpetrating family violence. Cassandra reported these breaches as they occurred, but her ex-husband was never charged. Police referred to the breaches as 'family law matters'.

In the FCFCOA final hearing the Judge remarked of the persistent breaching of intervention orders and the emotional harm to Cassandra and her children.

The regional context of our service is an important consideration as services for victim survivors are limited. There is no Specialist Family Violence Court in our region, and HRCLS is the only free legal service in our region.

HRCLS are funded to provide duty lawyer services in the Magistrates Courts of Victoria located in Wangaratta, Wodonga and Myrtleford. However, these courts do not have support services for victim survivors of family violence, or support services for persons using violence.

In the Local Court of New South Wales in Deniliquin, Finley, Corowa and Albury court support is provided by Women's Domestic Violence Court Advocacy Service (WDVCAS), and while HRCLS is not funded to provide duty lawyer services in these courts our partnerships enable client referral for family law matters and everyday legal problems being experienced by victim survivors.

Recommendations

1. Fund legal and non-legal assistance for victim survivors throughout their family law process.
2. Fund legal and non-legal assistance for victim survivors in the FVO process.

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

Multiple barriers exist for litigants in the family law system to obtain and enforce family violence orders. Accessing multiple courts for regional people is a barrier that is greater still for people living in cross-border communities.

HRCLS is a cross-border generalist service that provides legal assistance Victoria and New South Wales. The communities of Albury/Wodonga, Corowa/Wahgunyah and Rutherglen, Mulwala/Yarrawonga, Barooga/Cobram, and Tocumwal/Berrigan are interconnected and daily life including work, study, recreation and accessing services occurs without border. It is often not until people are experiencing a legal problem that the complexity of the border is understood.

It is not unusual for victim survivors with family law proceedings to have FVOs on one side of the border, that are breached on the other. HRCLS has had multiple clients who have reported breaches to police on the other side of the border to where the order was obtained, and when time has come to extend the order, the police have had no record of the breach from the other State and do not extend the order. While this situation is unique to cross-border communities it requires greater attention and adds an additional layer of complexity for victim survivors to navigate, and reduces their safety where FVOs are not extended because information was not shared between State police .

It is HRCLS experience that the intersection of parenting orders and FVOs can be a safety risk for victim survivors of family violence, as these case studies illustrate:

Renata, a victim survivor, had a FVO in place and made a report to Victoria Police when her ex-husband breached this. Following visitations, he [REDACTED] [REDACTED] Reporting the breach Renata was told by police he was 'allowed' to contact her and that the breach wouldn't be investigated.

Police showed a lack of understanding of family violence and the ways it can be perpetrated to coerce, manipulate, and cause harm.

Renata felt helpless in trying to protect her safety and wellbeing as a result of her ex-husband's use of parenting orders to continue perpetrating family violence without assistance or protection from police as enforcers of the FVO.

Final parenting orders were in place for Nikita, but the abuse they had suffered continued with her ex-partner using the family law orders to continue perpetrating.

Nikita and their ex-partner use a parenting app for communication. Their ex-partner uses this app and the parenting arrangements set down in the order, to abuse, control, and manipulate. Nikita's ex-partner has refused to return the children after visitations contravening the parenting orders, and forcing Nikita to travel to [REDACTED] to collect them. The burden on Nikita of doing this is exacerbated by their financial disadvantage.

Nikita has reported incidents of abuse and coercion to police including the abuse via the parenting app but has been told it is 'a family law matter'.

HRCLS has advocated for Nikita with police who finally made application for a FVO, however they refused to seek a full order. Nikita has an order that only prevents her ex-partner from committing family violence. Because of this order, police have refused to charge Nikita's ex-partner with breaches when they withhold the children and communicate abuse.

Nikita is loath to go back to court due to cost, her experience of systems abuse by her ex-partner, and fear of getting a worse outcome.

Maria was relieved final parenting orders were in place. It was [REDACTED] and she had separated from her ex-husband in [REDACTED]

The orders allowed for communication between herself and her ex-husband to facilitate parenting. Maria's ex-husband had perpetrated family violence in their relationship and Maria had a full FVO in place for protection. The first application had been made in [REDACTED] and final application in [REDACTED]

In the communication channel agreed for parenting Maria began receiving messages from her ex-husband that she found belittling and devaluing, messages that attacked her wellbeing. He was able to use the family court order to continue to perpetrate coercive control. Maria reported this to her local police station who informed her it was 'a family law matter' and that they couldn't assist.

Maria was being supported by Centre Against Violence and HRCLS who advocated for police to take her statement. Eventually it was arranged.

Maria's ex-husband was charged with breaching the FVO however police later withdrew all [REDACTED] charges after the Magistrate commented the communications seemed 'within normal parenting communication'.

Maria has lost confidence in police and withdrew her application to extend the family violence order.

Maria was able to navigate through an abusive relationship, protect her children, seek safety, and follow the processes for victim survivors set out in the legal system but the intersection of parenting orders with family violence exposed Maria to further harm.

Maria was advised she could seek change through a further application to the FCFCOA but she did not want to recommence proceedings and be exposed to ongoing financial abuse. Maria felt her ex-husband would continue to weaponise the family law process.

Maria is exhausted after a [REDACTED] long journey to safety, and she is without the protection of a FVO.

Navigating multiple court processes is a significant burden for victim survivors that can impact their wellbeing, where systems abuse occurs to continue the family violence the impact on wellbeing is even greater, and where there is no enforcement of the orders, greater still.

HRCLS clients rarely agree to filing applications for family law injunctions because of the retraumatising process of attending court, and a lack of confidence in the system to help and protect them. The cost and time also make this avenue prohibitive.

HRCLS also finds Magistrates hesitant to override a family court order and make a s68R order to amend a family law parenting order to protect a victim survivor from violence.

Wrap around legal and non-legal support services for victim survivors to access FVOs during family law proceedings is necessary. The Family Advocacy Support Service (FASS) at the Albury FCFCOA is an effective wrap-around support service.

HRCLS has concerns about the safety and security of victim survivors in obtaining family violence orders in the Magistrates' Courts and Local Courts of our region and notes that in North East Victoria the use of Online Magistrates' Court is inconsistent.

In Mansfield, the waiting area of the Magistrates' Court is a small corridor, most people wait outside at the front of the court. Similarly, Myrtleford and Corryong do not have a safe area for victim survivors. At the Wangaratta Magistrates' Court there is a safe room upstairs that has only one access point, presenting a significant concern. At Wodonga victim survivors can wait outside of an adjoining unused court room, an example of court staff providing a solution using existing infrastructure.

At the Deniliquin Local Court there is a safe room at the back of the court, requiring victim survivors to walk past the bench their perpetrator is sitting. At Finley there are two rooms for waiting, with a shared entry to the court room.

Victim survivors of family violence in regional communities face a range of barriers to justice as identified in the 2016 Victorian Royal Commission into Family Violence. These have not been addressed in full nor overcome. Postcode must not determine access to justice in Australia.

Recommendations

3. Provide resources to support victim survivors of family violence in regional courts, including court support services and extended duty lawyer roles.
4. Introduce uniform family violence criminal legislation.

5. Information relating to FVOs must be shared between police to ensure victim survivors are adequately protected from violence. Breaches must be able to be reported where they occur and that information sent by police to the place of the order application. This work must be done in the background to ensure the safety of victim survivors. Flaws in current processes expose victim survivors to unacceptable harm.
6. Introduce mandatory training for police on the intersection of family law and family violence.
7. Introduce training for Magistrates on the intersection of family law and family violence proceedings, more specifically the use of s68R is required
8. Victim survivors need wrap-around support services. Place-based support services exist and must be funded to provide adequate support to victim survivors throughout legal proceedings. In the experience of HRCLS and documented in recent reports such as Victoria Law Foundation's recent Public Understanding of Law Survey, that people experiencing a legal problem often have more than one and it is not uncommon to have a cluster of problems. Victim survivors require non-legal support alongside legal support throughout legal processes not limited to family law and family violence, but also victims of crime compensation, tenancy, fines and consumer law. Victim survivors require supports that see the whole person rather than isolated legal matters. Regional community legal centres have the knowledge and skill to assist clients and should be funded to provide these services to people otherwise unable to access legal assistance.
9. Fund integrated health justice partnerships.
10. Conduct safety audits of existing court infrastructure and provide safe rooms as required.

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

It is the experience of HRCLS that applications for interim FVOs are accessible for victim survivors who have adequate legal and non-legal support. However, that enforcement of FVOs where there are family law proceedings or orders, is often frustrated due to the lack of knowledge or understanding of coercive control by police, and the hesitation of Magistrates in making orders where family law orders exist.

It is not uncommon for perpetrators of family violence to use the two systems to continue the violence and to frustrate outcomes.

A recent victim survivor client of HRCLS had finalised a parenting plan with the assistance of Family Dispute Resolution following a history of family violence.

They had a five-year family violence order in place protecting them and their children. However, a day following agreement of the parenting plan the ex-partner filed an application for a FVO.

The application was made ex parte with information that misled the court as to the residence of the children. An interim order was made against our client with whom the children resided, restricting our client from being with the children.

HRCLS does not support the co-location of courts when existing arrangements are already under resourced. Our concern is that regional victim survivors of family violence would face greater barriers if travelling further to courts was required.

Legal and non-legal support services that promote early identification of and response to family violence exist. An example of this is HRCLS integrated family violence partnership with Centre Against Violence. The objective of the partnership is to deliver critical, early and targeted legal assistance to victim survivors. The partnership assists 200 victim survivors annually across seven local government areas in North East Victoria.

HRCLS lawyers attend CAV in Wangaratta and Wodonga to provide legal assistance to victim survivors, and secondary consultations and legal education sessions to CAV staff. In the past two years HRCLS has held four FVO workshops for CAV family violence support workers aimed at upskilling them to support victim survivors in applying for FVOs. The workshops are place-based to ensure accessibility to lawyers and learning. In understanding the FVO process, support workers can better support victim survivors.

HRCLS has received the following feedback on the partnership with CAV from victim survivor clients:

'I wouldn't be in the position I am in now, mentally, physically, financially, legally, in all aspects really, with yours and CAV's assistance, help and support.'

'Leaving and stopping the cycle of the Domestic Violence situation I found myself in would have been impossible without CAV's referral and assistance and your assistance. You do amazing work... supporting women at their most vulnerable...'

HRCLS is currently seeking funding security for this partnership.

Recommendations

11. Introduction of a trigger in the family court when family violence is uncovered during proceedings. Where evidence of risk exists, this should trigger an order for an injunction that the perpetrator not commit family violence. This then moves the matter to the family violence jurisdiction where any breach is a criminal offence.

12. Further investigation of whether making family violence order breaches a Commonwealth offence would improve processes and better protect victim survivors, is merited.

13. Victim survivors require legal assistance earlier, the role of duty lawyers should be expanded to enable proactive communication with victim survivors, police and the courts. When applications are lodged the victim survivor can be connected with support services and speak with duty lawyers before their first return date. This process enables AFMs and duty lawyers to be better informed prior to court reducing court time and relieving pressure on victim survivors.

14. Fund duty lawyers are not funded to do further and better particulars in FVO applications, the provision of legal assistance at this stage would assist victim survivors.

4. Reforms that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs include:

HRCLS often see victim survivors exposed to further coercive and financial control in family law proceedings. Perpetrators use legal proceedings to delay and frustrate settlement, impacting the wellbeing of victim survivors. It is not unusual for perpetrators to use FVOs as a bargaining chip in family law proceedings, promising to settle family law proceedings on the withdrawal of FVOs.

The issue of vexatious litigants and systems abuse across both family law and family violence jurisdictions must be addressed.

The protection of pets in family law and family violence matters is an area for reform.

Jess noticed an escalation in her husband's behaviour and became concerned for her safety and that of her young children. [REDACTED]

[REDACTED] Her nurse connected Jess with The Orange Door who coordinated safe accommodation for Jess and her children. They went into hiding.

Jess and her children all had pets but were unable to retrieve them from their house because of the safety risk it would pose.

Jess and her children were devastated not to have their pets, Jess recalls this as being one of the hardest parts of leaving.

[REDACTED]

The missing pet had contact with a regional Council, animal rescue centre, animal pound, veterinary practice, and police, and none of these authorities confirmed the pet's identity against their microchip which connected them to Jess.

Registering and microchipping pets is a responsibility and a safeguard – and yet, in Jess's case multiple authorities overlooked or disregarded this information and process.

Over [REDACTED] after Jess and her children fled family violence, their pets were recovered with legal assistance.

Jess is strong in her belief that the system must be changed. Animals are important for children and families, in Jess's words, 'children who have experienced family violence have been through enough.'

Recommendations

15. Reform information sharing between the Federal Circuit and Family Court of Australia (FCFCOA) and the Magistrates Court in Victoria, and Local Court in New South Wales is needed, particularly where there are concurrent proceedings.

16. Relaxation of the threshold for declaring a vexatious litigant.

17. Family law and family violence legislation to recognise pets and provide for the protection and recovery of these to reduce harm to victim survivors.

18. Funding security for the legal and non-legal assistance sectors to support victim survivors access justice.

HRCLS is pleased to make this submission and to continue providing legal assistance to victim survivors of family violence in our region, legal education to build community capacity in responding to family violence, and advocacy to improve the legal system for victim survivors.

Yours faithfully,



Sarah Rodgers
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Hume Riverina Community Legal Service