

Inquiry into Family Violence Orders

Submission to the Senate Standing Committee on Social
Policy and Legal Affairs

26 July 2024



National Legal Aid

Acknowledgement

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities.

We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.

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About National Legal Aid

National Legal Aid (NLA), representing the directors of the eight Australian State and Territory legal aid commissions (LACs), welcomes this opportunity to provide our views on this inquiry into family violence orders.

LACs are the largest providers in the country of family law, family violence and child protection legal services. These services include ongoing legal representation in court proceedings, duty lawyer, dispute resolution, legal advice and legal tasks, social support services, and information and warm/referrals to other organisations where appropriate.

LACs provide a range of specialist programs such as the Commonwealth Government's Family Violence and Cross-Examination of Parties Scheme, Family Advocacy and Support Services based at the family law courts and other relevant courts¹, Independent Children's Lawyers (ICLs), and Domestic Violence Units. LACs also deliver legal professional development, community legal education and training (activities and resources) to community service providers and to the community generally about family law, family violence and child protection.

LACs provide critical legal assistance to victim-survivors of domestic and family violence. More than 86% of grants of aid for family law matters involve a risk of domestic and family violence.² In 2022-23 Legal Aid Commissions (LACs) delivered 130,239 family law services including more than 32,000 grants of aid for family law matters³. A further 20,000 grants of aid were also delivered in State/Territory based family violence and child protection.⁴

LACs also deliver specialist domestic and family violence services via the Family Advocacy and Support Services (FASS). There are 49 FASS locations nationally and the service provides lawyers and social support workers to assist family law clients affected by family violence, providing supports and referrals for both victim-survivors and alleged perpetrators. In 2022-23 LACs delivered over 14,000 FASS duty lawyer services and over 28,000 FASS social support services.⁵

We see first-hand the impacts of the current gaps in national co-ordination and collaboration within the legal system.

The following recommendations are focused on a national approach to improving safety and access to justice for victim-survivors of domestic and family violence.

Individual LACs may make their own submissions to this Inquiry about the circumstances of their respective jurisdictions.

¹ And the Local Court of the Northern Territory domestic violence lists in Darwin, Katherine and Alice Springs

² Internal National Legal Aid data

³ [ABS Legal Assistance Data 2022-23](#).

⁴ Internal National Legal Aid data

⁵ Internal National Legal Aid data

Summary of recommendations

Recommendation 1

National family violence risk information sharing scheme and register

- 1.1 Governments across federal, state and territory jurisdictions implement a national risk information sharing scheme and register.

Recommendation 2

Consultation and co-design with First Nations communities

- 2.1 Reforms and services in the family law system be co-designed with First Nations communities, in alignment with Closing the Gap principles of self-determination.
- 2.2 Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Aboriginal Community Controlled Women's Legal Services should receive additional legal assistance funding to provide appropriate and culturally safe service delivery to First Nations communities.

Recommendation 3

Training for all working within the legal system

- 3.1 Domestic and family violence training be funded and developed for all working within the legal system, including legal professionals, court staff, police and the judiciary.
- 3.2 Training for police should include training about:
 - heightened risk of domestic and family violence during separation.
 - police powers to enforce personal protection orders.
 - intersection of state-based family violence orders and family law orders.
 - inclusion of children on state-based family violence orders.
 - misidentification of the person most in need of protection; and
 - non-collusive practice.

Recommendation 4

Improve effectiveness of existing system

- 4.1 Reforms to personal protection orders to ensure they are more accessible and easier to enforce.
- 4.2 The inquiry examines the penalties imposed by the FCFCOA and the FCWA for breaches of personal protection orders.
- 4.3 The inquiry considers criminalising non-compliance with personal protection orders, with the opportunity for further consultation about this option.
- 4.4 The inquiry explores whether the FCFCOA should be provided with the power to make, vary or extend state-based family violence orders under state-based schemes.
- 4.5 That the National Legal Assistance Partnership 2025-30 prioritises investment in legal assistance to support efforts to end domestic and family violence, including ongoing and additional funding for Family Advocacy and Support Services.

Submission

Over the past 14 years, and as part of the National Plans to end violence against women and children, there have been several national programs and initiatives established within the family law system to help families separate in a safe, child-centred, supportive, accessible and timely way. The aim of these initiatives has been to provide better coordination and awareness of family safety issues in Australia's family law system and increase the protections and support available to victim-survivors as they move through the court system. Programs within the courts such as the Lighthouse Project and the co-location of child protection and policing officials within most family law court registries across Australia have improved the family law courts system's capacity to recognise and respond to violence against women and children in a timely manner.

The Family Advocacy and Support Service Program (FASS) was established with funding from the Australian Government as part of a \$100 million package to support the Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022. The scheme has received additional funding to deliver services in every family law court registry⁶ and is a critical program in terms of supporting victim-survivors to access and navigate the domestic violence, child protection and family law systems. The benefit of FASS to families experiencing domestic and family violence has been acknowledged in a range of Government inquiries and Committee reports since its inception.

The recent family law reforms centre the best interests and safety of children and the safety of their caregivers, recognise that today's family structures are diverse, promote inclusion and accessibility and improve system navigation. The reforms aim to ensure that the family law system will be less confusing and traumatic, leading to safer outcomes for parents and children. This includes a focus on improving information sharing within the family law, domestic violence and child protection systems to ensure victim-survivor safety.

However, there are a range of additional changes that could be made around family violence orders that would improve the safety of victim-survivors. These are outlined below.

A national family violence risk information sharing scheme and register

NLA recommends that governments across federal, state and territory jurisdictions implement a national risk information sharing scheme and register to increase transparency, accountability and information sharing across the sector. This could include a register of family law court orders, family violence orders, and other relevant information regarding risk factors including child protection issues.

This scheme could be modelled on the Victorian Family Violence Information Sharing Scheme. The Victorian scheme supports effective assessment and management of family violence risk, as Information Sharing Entities or 'ISEs' (key organisations and services) can share information related to assessing or managing family violence risk. The Scheme supports ISEs to keep perpetrators in view and accountable and promotes the safety of victim-survivors of family violence.

Recommendation 1.1: Governments across federal, state and territory jurisdictions implement a national risk information sharing scheme and register.

⁶ and the Local Court registries of Darwin, Katherine and Alice Springs

Consultation and co-design with First Nations communities

Inquiries have found that while First Nations families are overrepresented in the child protection, criminal and civil law systems, they are significantly underrepresented in the family law system, and experience multiple barriers in accessing the family law system.⁷ Recent research and reports have found that First Nations families are disproportionately affected by family violence. For example, in comparison to other Australian women, First Nations women are 34 times more likely to be hospitalised because of family violence and 10 times more likely to be killed.⁸

It is therefore critical that any reforms are implemented with consideration to the barriers faced by First Nations families in this jurisdiction, and whether any additional changes directed to mitigate against this are needed. Consideration should be given to how family violence order proceedings can be conducted in a culturally appropriate and trauma-informed way.

NLA recommends that Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Aboriginal Community Controlled Women’s Legal Services should receive additional legal assistance funding to provide appropriate and culturally safe service delivery to First Nations communities. This includes culturally appropriate services to women and children leaving domestic and family violence, and community informed early intervention programs.

Significant funding is required for meeting Closing the Gap Targets, such as Target 13 which states that the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced by at least 50 per cent, as progress towards zero by 2031.

Law reform and services should be delivered in alignment with Closing the Gap principles of self-determination. Law reform, service design and investment in programs for First Nations communities should occur through principles of co-design and partnership, ensuring self-determination for First Nations services and communities.

Recommendation 2.1: Reforms and services in the family law system be co-designed with First Nations communities, in alignment with Closing the Gap principles of self-determination.

Recommendation 2.2: Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Aboriginal Community Controlled Women’s Legal Services should receive additional legal assistance funding to provide appropriate and culturally safe service delivery to First Nations communities.

⁷ Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence*, (December 2017), 230-231.

⁸ Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence*, (December 2017), 230-231.

Training for all working within the legal system

Many States and Territories have invested in and developed domestic and family violence training for those in contact with the justice system including police. However, this has not been developed in a nationally consistent way.

Domestic and family violence training should be funded and developed for all working within the legal system, including legal professionals, court staff, police⁹ and the judiciary. This would assist in developing a legal system that is family violence informed, trauma-informed, culturally safe, and child rights focused. It would also progress priority law reform tasks to address domestic and family violence.

This must include regular access to meaningful training developed and delivered by subject matter and lived-experience experts that is regularly independently evaluated for its effectiveness, including evidence of improvements in the practice of professionals working in the legal system. Should deficits be identified during the evaluation process, it is essential that the training be revised to address these.

NLA recommends that the training for police include training focused on improving the effectiveness of the existing system, as set out in the next section. This could include training about the heightened risk of domestic and family violence during family law proceedings, police powers to enforce personal protection orders, the intersection of state-based family violence orders and family law orders and the inclusion of children on state-based family violence orders.

Recommendation 3.1: Domestic and family violence training be funded and developed for all working within the legal system, including legal professionals, court staff, police and the judiciary.

Recommendation 3.2: Training for police should include training about:

- **heightened risk of domestic and family violence during separation.**
- **police powers to enforce personal protection orders.**
- **intersection of state-based family violence orders and family law orders.**
- **inclusion of children on state-based family violence orders.**
- **misidentification of the person most in need of protection; and**
- **non-collusive practice.**

Improve the effectiveness of the existing system

Research by the Australian Institute of Health and Welfare has identified that ‘parenting’ or separation proceedings are a high-risk period for family and domestic violence.¹⁰ This is consistent with the experience of LACs. FCFCOA, FCWA and family violence application proceedings can trigger an escalation in the aggressive and violent behaviour of the perpetrator, and therefore heighten risks to the partner and/or children.¹¹

The current system does not adequately manage or respond to this heightened risk. Currently, victim-survivors of domestic and family violence who are involved in family law proceedings can

⁹ For example, the Prevent Assist Respond training ([PARt](#)) in the Northern Territory developed by a consortium comprising Tangentyere Council Aboriginal Corporation with their partners Women’s Safety Services of Central Australia, Domestic Violence Legal Services, and NT Legal Aid.

¹⁰ AIHW: FDSV summary - Australian Institute of Health and Welfare ([aihw.gov.au](#))

¹¹ Cited in Cherie Toivonen and Corina Backhouse (2018). National Risk Assessment Principles for domestic and family violence (ANROWS 07/2018) page 14.

apply to the FCFCOA and FCWA for an injunction for personal protection (personal protection orders).¹² These orders are often called personal protection orders.

Personal protection orders are a critical and necessary aspect of keeping victims and their children safe, however they have certain limitations.

These limitations include:

- The onus is often on the victim-survivor to make the application for a personal protection order.
- The process for initiating a breach of a personal protection order is complex and costly.
- Barriers created by needing to engage in multiple court systems.
- The intersection of state-based family violence orders and family law orders is complex.
- Small penalties are often imposed for breaching a personal protection order.
- Police are often reluctant to enforce a personal protection order.
- A breach of a personal protection order is not a criminal offence.
- The FCFCOA¹³ does not currently have powers to make, vary or extend state-based family violence orders, although some state-based family violence orders permit contact or time-spending between a perpetrator parent and protected child/ren where contact or time-spending is expressly authorised by an FCFCOA order.

Implementation of law and policy reform to end domestic and family violence is most effective when legal assistance is available to support victim-survivors to access the legal system. Investment in Family Violence Prevention Legal Services, Women’s Legal Services and Legal Aid family law and child support legal assistance is an essential part of ensuring that victim-survivors are able to access legal help to ensure their safety and ongoing financial independence. We recommend that the National Legal Assistance Partnership 2025-30 prioritises investment in legal assistance to support efforts to end domestic and family violence.

NLA recommends that reforms be made to improve the effectiveness of the existing system. This could include:

Recommendation 4.1: Reforms to personal protection orders to ensure they are more accessible and easier to enforce.

Recommendation 4.2: The inquiry examine the penalties imposed by the FCFCOA and FCWA for breaches of personal protection orders.

Recommendation 4.3: The inquiry consider criminalising non-compliance with personal protection orders, with the opportunity for further consultation about this option.

Recommendation 4.4: The inquiry explore whether the FCFCOA should be provided with the power to make, vary or extend state-based family violence orders under state-based schemes.

Recommendation 4.5 That the National Legal Assistance Partnership 2025-30 prioritises investment in legal assistance to support efforts to end domestic and family violence, including ongoing and additional funding of the Family Advocacy and Support Services.

¹² *Family Law Act 1975*, s 68B.

¹³ The FCWA does have the power to make, vary and extend state-based family violence orders but this power is rarely used because of the Court’s family law workload and resource issues