



PILBARA COMMUNITY LEGAL SERVICE Inc.

Submission to the Inquiry into Family Violence Orders 19 July 2024

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Background

1. Pilbara Community Legal Service (PCLS) is a not-for-profit, government-funded Community Legal Centre (CLC) providing a range of free services which include legal, financial counselling, tenancy advocacy and support, housing support, Redress support, domestic violence advocacy and victim support and community migrant services.
2. PCLS commenced operating in 1993 and has been providing services in the Pilbara region of Western Australia (WA) for over 30 years. PCLS aims to reduce legal disadvantages, increase the capacity of individuals to manage their lives effectively and ensure people understand their rights and obligations.
3. PCLS is based in Karratha and has offices in South Hedland, Newman and Roebourne. All PCLS services undertake regular outreach across the Pilbara region. In-person outreach is complemented with audio-visual aids allowing online capability.
4. PCLS receives Commonwealth funding under National Legal Assistance Partnership (NLAP), Department of Social Services for Redress Support and the Department of Home Affairs for Settlement and Transition Support for Migrants. State Government sources include funding for family and domestic violence, housing homelessness and tenancy support and financial counselling. PCLS is well placed to provide a holistic, wrap around integrated service to support clients across a range of intersecting issues.

Areas of inquiry that this submission addresses

5. This submission relies on academic knowledge and anecdotal experiences within the diverse regional and rural communities of the Pilbara region. Please note that all case studies have been de-identified and names changed for the protection of clients.
6. PCLS addressed the following (3) terms of references (ToR):
ToR 2. barriers for litigants in the family law system to obtain and enforce FVOs;



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ToR 3. how FVOs could be more accessible for victims of violence going through the family law system; and

ToR 4. other reforms that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

Barriers for litigants in the family law system to obtain and enforce FVOs

Inclusion of court location on FVOs

7. In some circumstances, perpetrators use the court location which is included on FVOs to locate victim-survivors. This forces victim-survivors to decide between:
 - a. staying in the same location as the perpetrator until a FVO is granted; or
 - b. escaping the violence and applying for a FVO once they have left the town and notify the perpetrator of where they have relocated to.
8. Currently in Western Australia, upon request, the courts may transfer proceedings from the court which the application for an FVO was filed to the desired court. It is a burden for the victim-survivor seek transfers and there is no guarantee that court will make orders for the transfer.
9. When a FVO is granted, the order includes the court location of where it was made. When victim-survivors relocate for safety reasons, they do not want the perpetrator to become aware of their location. Where possible, court locations should be removed from all documents provided to the respondent.
10. The court location and victim-survivor's address details should be removed from Family Court documents wherever possible. Any details not already known to the perpetrator should be removed from copies provided to that person and their legal team. Due to the adaptability of perpetrators, access to resources and pervasiveness of coercive control any details regarding location can be used to continue to abuse the victim-survivor.
11. We form the view that this issue could be resolved by:
 - a. the formation of two (2) streams. Firstly, attends the court location and requests the non-discretionary immediate transfer of the court matter to the



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court of preference and, secondly, the court retains its discretion to move the matter with greater weight given to evidence and disclosures of FDV; and

b. providing applicants with an option to remove court location identification on FVO's provided to respondents.

Case study 1

12. Georgia* was in [REDACTED] when she was assaulted by her partner. She wanted to leave town but did not want her partner to know where she was going. To complicate the matter further, the limited bus timetable meant the victim-survivor had to either travel the next day or wait a week.

13. We discussed her options as:

- a. wait in [REDACTED] to get a FVO so that it had [REDACTED] Magistrates Court' recorded on; or
- b. travel over 1,000km to return to her Aboriginal Community and apply for a FVO at her closest justice precinct which was another 100km out of town.

14. Neither of these options were viable as the victim-survivor had to decide to either stay in the same town as the offender long enough for the FVO to be granted or escape the violence and wait to apply for a FVO which would notify the perpetrator that she had relocated. Both options resulted in the victim-survivor fearing for her safety and led to the victim-survivor's decision to not get a FVO. She explained that she did not feel as though the system was flexible to her needs and felt safer to relocate without a FVO.

Case study 2

15. Emily* fled with her child from her home in [REDACTED] to the [REDACTED] to get away from her abusive ex-partner. The perpetrator had used the child to lure the victim-survivor back to the relationship as he claimed Emily was going to cause the child trauma by not allowing her to have a relationship with him. Emily felt as though obtaining a FVO would further prevent the father from seeing the child.



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16. *When the abuse continued and the perpetrator started stalking Emily and her extended family, she fled with her child to the [REDACTED]. The perpetrator sent abusive and threatening emails to her, but Emily did not seek a FVO and instead tried to feel safe knowing the perpetrator did not know their location.*

17. *The perpetrator stalked the victim-survivor and found her location. When the perpetrator told Emily that he knew her location by way of another abusive message, Emily finally sought a FVO.*

18. *Emily would not have had to endure the abuse if she could have applied for the FVO without having to disclose her location on the order.*

Complexities of national recognition

19. While the government has created a system in which state restraining orders are nationally recognised, there is a need to develop this further. When victim-survivors are moving between states, they do not understand their orders are nationally recognised.

20. Further, orders can be complex to understand due to the disconnected nature of restraining orders, inconsistent formatting and ongoing updating of these orders. While a national codification of family violence laws would be preferred, the suggested solution is that a national database is created in which all relevant justice bodies can access these orders and effectively put them into place in relation to state laws. This would allow for real time updating of orders, conditions and breaches (especially for transient and/or serial offenders).

21. We form the view that this issue could be resolved by:

- a. nationally consistent formatting of orders;
- b. consistent messaging of FDV requirements; and
- c. a national FVO database.

Case study 3

22. *When Stacey* moved from [REDACTED] to WA there was a protection order that was made [REDACTED] protecting Stacey from the perpetrator. The perpetrator followed*



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her to WA and continued breaching the order. Stacey asked the police to clarify the conditions of the order, however it was deemed too difficult for the police to ascertain that information and she was instead encouraged to apply for a new order by WA Police.

23. *The burden should not have been on the victim-survivor to apply for a new order as this process is inefficient and traumatising for victim-survivors.*

24. *The investment into a national database would allow for the victim-survivor to inform police and justice services at time of interaction (whether that be during a breach, attending an incident or attendance at the station to alert police to update the data) and for police to rapidly apply the appropriate conditions and charge the breach.*

Family Court's reliance on a victim-survivor's decision not to report violence

25. Understandably, victim-survivors can be hesitant to report violence or breach of FVOs to the police due to uncertainty in consequences. This exists on a spectrum from fear or no action or outcome and reporting will further escalate risk through to concerns the perpetrator will be imprisoned, impacting the family and traumatizing the children.

Regardless of whether violence or a breach of a FVO has been reported to the police, the Family Court should adopt a more understanding approach in terms of consideration as to the reasons why victim-survivors may not be willing or wanting to report incidents. The Family Court should not give any weight to the fact that a victim-survivor has decided to not report violence or breaches of FVOs to the police.

Case study 4

26. *After an abusive incident which resulted in the perpetrator harming his ex-wife and their daughter, an FVO was put into place to protect the family. The perpetrator breached the order several times and was charged for these offences. He was ordered to pay a fine which was not significant to him.*



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27. The perpetrator proceeded to breach the order more than [REDACTED] times. After a drawn-out court process, [REDACTED]

[REDACTED] was sentenced with a community based order. Again, this was insignificant and in no way broke the cycle of violence and did not require him to change his ways. [REDACTED]

[REDACTED] The family was fearful of him being incarcerated further and did not report these breaches.

28. This is not a stand-alone incident.

Case study 6

29. Roberta* obtained a FVRO that allowed the perpetrator to attend the property for custody swaps and be within a [REDACTED] to ensure she could talk to OP regarding the children.

30. The order has not stopped OP from continuing to abuse Roberta. [REDACTED] times, the perpetrator has been to court to face several charges for breaches and has been sentenced with small fines and community-based orders. The person who is supposed to be protected is left feeling unprotected by the system.

Case study 7

31. Charlie* and her husband separated after being together for [REDACTED] years. The perpetrator's abuse continued to escalate during the relationship, causing Charlie to be concerned for the safety of her children. After a series of incidents including [REDACTED]

[REDACTED] she applied for an FVO.

32. The perpetrator continued to abuse the victim-survivor when the FVO was in place. On one occasion [REDACTED]

[REDACTED]. The victim-survivor explained that she felt shame and embarrassment when she had to tell the parents of



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the children's friends about the incident. She also had to tell her children they can no longer have friends over.

33. *She did not report the breach because she was worried about him going to jail. She attained the FVO to make the abuse stop. The order in no way stopped the abuse from occurring and caused more anxiety for the victim-survivor.*

Misconception that the parent has rights to a child

34. Where a victim-survivor has children with the perpetrator, they are less likely to apply for an FVO due to concerns that they will impact the perpetrator's right to the child. They sometimes deal with abuse as they are unaware that FVOs and family orders can coexist.

35. Meanwhile, the perpetrator tends to believe that a FVO will impact their access to spend time with the children. As a result, perpetrators object to the FVO until it is finalised or dismissed, causing court resources to be wasted as well as using the system to continue to abuse the victim-survivor.

36. The Magistrate's Court reinforces this idea by often refusing to include children in FVOs and delegating this as an issue for the Family Court. Frequently, victim-survivors at ex parte hearings are advised that the children will not be included on the FVO order and instead are encouraged to seek family law advice. This means changeovers may be volatile, dangerous and traumatising for children. During time with the perpetrator, the children are scared, confused or are questioned about the victim-survivor. Times of contact as well as telephone and video communication can be used to continue perpetrating abuse.

37. Family law alternative dispute resolution procedures are often difficult due to the misconception that parents have a right to the child. Failure to focus on the best interests of the children creates a barrier to effective communication between parties to reach agreements outside of court.



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38. Greater education in the community should be a focal point to create clarity around the importance of the best interests of the child rather than the rights of parents.

Case study 8

39. *Clara* ended her relationship with her ex-partner. Clara and the perpetrator had [REDACTED] children together and she wanted to ensure the children still had a relationship with their father.*

40. *The perpetrator threatened Clara post separation and because she had witnessed the perpetrator being physically violent to others in the past, she interpreted these threats as real and significant.*

41. *Unfortunately, the perpetrator continued to use the children and financial matters to mentally and emotionally abuse her.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. *The perpetrator contested the application up to the final order hearing, claiming he was just trying to navigate coparenting and that the FVO would prevent him from having a relationship with Clara.*

43. *In this circumstance, the perpetrator used the FVO as an excuse to emotionally abuse the victim-survivor.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. *Courts should impose FVOs even where family court orders may override them in the future as is frequently the case that the victim-survivors have attempted to take*



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steps to formalize parenting arrangements in attempt to minimize exposure to abuse, however perpetrators are not willing to cooperate and instead rely on their “right as a parent” to get out of FVOs and engaging in effective negotiation for parenting arrangements.

Making FVOs accessible for victim-survivors of violence going through the family law system Facility in the family law to recognise FDV

45. It is evident from our experience that clients often want to deal with one legal issue at a time. This delays and sometimes prevents victim-survivors from applying for restraining orders. We form the view that this could be avoided through the creation of a clear pathway for victim-survivors to obtain FVOs in conjunction with family law matters.

46. Currently the Family Court has the power to make personal protection injunction orders to restrain a person from doing certain things (s 68B of the *Family Law Act 1975* (Cth) (FLA)). A breach of this order is enforceable by the police and the respondent may be arrested without a warrant (s 68C of the FLA).

47. We form the view that it should be simpler for victim-survivors to seek personal protection injunction orders. Additionally, the Family Court should have the power to grant personal protection injunctions where it is considered appropriate without the victim-survivor needing to make an application for these orders.

48. Including prompts in the Form 4 - Notice of Child Abuse and Family Violence that enables victim-survivors to request personal protection injunction orders be made would benefit victim-survivors by creating an avenue for seeking protection whilst, contemporaneously, dealing with their family court matters.

49. If prompts were included in the Form 4 – Notice of Child Abuse and Family Violence, a brief description explaining how personal protection injunction orders can provide similar protection to a FVO should be highlighted to ensure self-represented litigants understand the help available.



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50. The express inclusion of personal protection orders as an option in Family Court documents would eliminate the administrative burden for the victim-survivor to seek a FVO in the Magistrates Court whilst also mitigating the risk of retraumatizing victim-survivors who would otherwise be required to retell their story.

51. We form the view that this issue could be resolved by:

- a. including prompts to seek personal protection injunction orders in Form 4;
- and
- b. allow the Family Court to grant FVOs where appropriate.

Other reforms that would make it safer and fairer for victim-survivors of violence in the family law system

Better utilisation of conferencing/mediating

52. To overcome the common obstacle of a perpetrator objecting to a FVO due to fear that it will prevent them from spending time with their children, we form the view that it would be appropriate to require parties attend mediation. At mediation it would be beneficial to negotiate alternative FVO agreements (i.e. conduct agreement orders or undertakings), as well as drafting and signing a parenting plan that captured the current parenting arrangement. This will create clarity about how perpetrators can spend time with the children without breaching the FVO and will be an effective and efficient way to finalise FVO proceedings.

53. The use of shuttle conferencing in FVO matters in metro areas has reportedly been positive, however this is yet to be utilized in the Pilbara area. Mediation in FVO matters is said to be of a great benefit in reducing the impacts caused by presenting evidence in court as well as saving court resources. Shuttle conferencing is a positive option that can achieve more favourable outcomes for both parties.



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PCLS consents to:

- This submission being published on the Review website.
- PCLS being identified in the report of the Review as having made a submission.

Thank you for the opportunity to make a submission to the Family Violence Order Inquiry.



Joanna Collins CEO

Pilbara Community Legal Service