



Law Council
OF AUSTRALIA

Inquiry into family violence orders

**House of Representatives Standing Committee on Social Policy and Legal
Affairs**

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 104,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2024 are:

- Mr Greg McIntyre SC, President
- Ms Juliana Warner, President-elect
- Ms Tania Wolff, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Mr Lachlan Molesworth, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

The Law Council is grateful for the significant contributions of its Family Law Section, in addition to the following Constituent Bodies, in the preparation of this submission:

- the Queensland Law Society;
- the Law Institute of Victoria;
- the Law Society of New South Wales;
- the Law Society of South Australia; and
- the Victorian Bar Incorporated.

The Law Council also acknowledges the assistance of its Access to Justice Committee and Rural, Regional and Remote Committee.

Executive summary

1. The Law Council of Australia appreciates the opportunity to assist the House of Representatives Standing **Committee** on Social Policy and Legal Affairs in its **Inquiry** into family violence orders (**FVOs**), adopted on 4 June 2024.
2. Navigating the family law system can be a potentially dangerous time for victim-survivors of family violence. Where children are involved, there are fundamental difficulties with concurrently navigating the state- and territory-based courts for family violence and child protection matters, and Division 1 or Division 2 of the Federal Circuit and Family Court of Australia (**FCFCOA**) to deal with parenting and property disputes under *the Family Law Act 1975* (Cth). In this context of fragmented responsibilities between jurisdictions, access to, and the subsequent enforcement of, FVOs can be needlessly difficult.
3. The Law Council strongly supports measures aimed at better supporting victim-survivors of family violence, and assisting them to obtain timely and appropriate protections, including the provision of adequate legal advice. We also support measures that improve access to the remedies available—at both a federal and state/territory level—to individuals who are affected by family violence, including children.
4. Further, it is critical that individuals who belong to marginalised or disadvantaged groups—such as First Nations peoples, people living with a disability, and individuals who live in rural, regional and remote (**RRR**) areas—can benefit from these measures.
5. We therefore welcome this Inquiry, noting its targeted focus on what can be done at the federal level to provide better access to FVOs for victim-survivors in the family law system, and the effective enforcement of those orders.
6. In accordance with the terms of reference, this submission primarily focuses on the opportunities to strengthen the mechanisms for protecting family law litigants from family violence. This submission is underpinned by the following key arguments:
 - (i) While the Family Law Act recognises the profound effect of family violence on children and families, the family law system as a whole—including the FCFCOA and specialist services—is not sufficiently equipped, nor resourced, to identify, share information about, and respond to the complexities of family violence appropriately.
 - (ii) Systemic change is needed to better address systems-abuse tactics and power imbalances between parties, and to enable victim-survivors of family violence to resolve family law disputes in a manner that is safe, and free from further abuse from perpetrators. It is important to recognise that this system must also balance the interests and legal needs of the accused in matters where family violence is alleged.
 - (iii) The legal assistance sector in Australia is significantly underfunded and, as a result, is unable to meet the needs of the community, including those who are affected by family violence. The extent, and impacts, of this chronic underfunding was comprehensively illustrated in the Independent Review of the National Legal Assistance Partnership Final Report (**NLAP Review Report**), released in May 2024.¹ This situation will only deteriorate without urgent action. We encourage the Committee

¹ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>>.

to have close regard to the findings and recommendations in the NLAP Review Report as part of this Inquiry.

7. This submission makes the following recommendations:

- **Recommendation 1:** A comprehensive and holistic range of measures must be employed at the federal and state/territory level in response to the risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during FCFCOA proceedings. Measures should include, at a minimum:
 - greater funding and resourcing for the FCFCOA, including its risk-screening and triaging initiatives;
 - increased funding—on an ongoing basis—for frontline legal and non-legal services and programs;
 - sophisticated policing and criminal justice systems to respond to family violence; and
 - ongoing investment in primary prevention measures.
- **Recommendation 2:** Ongoing and sufficient funding for information-sharing processes with the FCFCOA, information-sharing agencies, and state and territory courts, including the extension of the Australian Government's Co-location Pilot beyond mid-2025, must be prioritised.
- **Recommendation 3:** Technological solutions to support information sharing must be progressed. As a first step, the Committee should seek an update from the Attorney-General's Department (**AGD**) on the status of the scoping study.
- **Recommendation 4:** The Australian Government must encourage state and territory governments to improve police education and awareness to support the effectiveness, and enforcement, of FVOs, including:
 - reassurance that the powers under the Family Law Act can, and should, be used; and
 - specific guidance on how to deal with, and ensure fairness for, individuals who are arrested for breaching an FVO.
- **Recommendation 5:** The Australian Government must encourage and assist states and territories to provide clear and accessible guidance and educational resources to the community, including police, about the legal intersection of FVOs and parenting orders.
- **Recommendation 6:** Wrap-around, culturally appropriate support services—including qualified interpreters—must be available and accessible, including to defendants in family violence matters, to enable parties to engage in each stage of the legal process safely and meaningfully.
- **Recommendation 7:** A pathway to, or the delivery of, services and programs should be integrated into the FCFCOA, with corresponding funding, including tailored programs for perpetrators of family violence.
- **Recommendation 8:** Opportunities should be explored to enhance the effectiveness of FVOs, including:
 - encouraging the development of consistent police training in states and territories, aimed at operational and cultural improvement, with a focus on enhanced interaction with the family law system;

- enhanced risk screening and case management processes in the FCFCOA;
 - greater judicial guidance in the FCFCOA, to clarify the practical effect of parenting orders where an FVO is in place, or is likely to be sought; and
 - the establishment of a national electronic database of FVOs, with sufficient ongoing funding to support its operation.
- **Recommendation 9:** The lapsed Family Law Amendment (Federal Family Violence Orders) Bill 2021 (**FVO Bill**) should not be reintroduced into the Parliament unless the significant concerns raised by the Law Council in its June 2021 submission to the Senate Legal and Constitutional Affairs Legislation Committee are clarified and satisfactorily addressed.²
 - **Recommendation 10:** There must be a significant and ongoing increase in the funding of the entire legal assistance sector, and the Commonwealth, state and territory governments must urgently give effect to the key funding recommendations of the NLAP Review Report (Recommendations 5, 18, 19 and 25).
 - **Recommendation 11:** A Higher Education Loan Program (**HELP**) debt relief scheme should be established for legal practitioners who reside and work in eligible RRR areas, to incentivise the recruitment and retention of qualified lawyers in underserved areas.
 - **Recommendation 12:** To ensure that the FCFCOA is equipped to intervene in matters involving family violence by issuing an injunction, consideration should be given to:
 - amending section 114AB of the Family Law Act to ensure that the FCFCOA is empowered to grant injunctions in circumstances where this is necessary; and
 - establishing and resourcing a separate court list in the FCFCOA, dedicated to applications for injunctions, with the capacity to hold urgent hearings.

² See Law Council of Australia, *Family Law Amendment (Federal Family Violence Orders) Bill 2021* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 25 June 2021) <<https://lawcouncil.au/resources/submissions/family-law-amendment-federal-family-violence-orders-bill-2021>> and *Federal Family Violence Orders scheme doesn't have all the answers* (Media Release, 2 August 2021) <<https://lawcouncil.au/media/media-releases/federal-family-violence-orders-scheme-doesnt-have-all-the-answers>>.

Previous Law Council submissions

8. We are pleased that this Inquiry is being conducted, given the ongoing and unacceptable crisis of family violence in Australia. However, we consider that inquiries and reviews, in themselves, do not represent meaningful progress. The findings and recommendations of those inquiries must be properly considered by governments, and subsequent action must be implemented—and funded—in a timely way.
9. We acknowledge that significant progress has been achieved in recent years, including through the Australian Government's ongoing interest in reforming the family law system. There is also a vast amount of important work currently underway as part of the **National Plan** to End Violence Against Women and Children 2022–2032.³ Nonetheless, we are concerned that the establishment of yet another family violence inquiry by the Australian Parliament will have the effect of further deferring the concrete action that is urgently required at a national level, to ensure that victim-survivors are supported and protected at all touchpoints of our legal system.
10. To this end, the Law Council—informed primarily by the expertise of its Family Law Section—has made submissions to a range of inquiries in the past decade that have relevance to the current Inquiry, including:
 - a submission to the 2014 inquiry into domestic violence in Australia by the Senate Finance and Public Administration References Committee;⁴
 - a submission to the 2017 inquiry into a better family law system to support and protect those affected by family violence by this Committee;⁵
 - submissions to the 2017–2019 Australian Law Reform Commission (**ALRC**) review of the family law system Issues Paper⁶ and Discussion Paper;⁷
 - a submission to the 2019 inquiry by the Joint Select Committee on Australia's Family Law System;⁸ and
 - a submission to the 2020 inquiry into family, domestic and sexual violence by this Committee.⁹

³ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022-2032* (2022) <https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf>.

⁴ Law Council of Australia, *Inquiry into domestic violence in Australia* (Submission to the Senate Finance and Public Administration References Committee, 20 August 2014) <<https://lawcouncil.au/resources/submissions/inquiry-into-domestic-violence-in-australia>>.

⁵ Law Council of Australia, *Parliamentary inquiry into a better family law system to support and protect those affected by family violence* (Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, 22 May 2017) <<https://lawcouncil.au/resources/submissions/parliamentary-inquiry-into-a-better-family-law-system-to-support-and-protect-those-affected-by-family-violence>>.

⁶ Law Council of Australia, *Review of the Family Law System – Issues Paper 48* (Submission to the ALRC, 7 May 2018) <<https://lawcouncil.au/resources/submissions/review-of-the-family-law-system-issues-paper-48>>.

⁷ Law Council of Australia, *Review of the Family Law System – Discussion Paper* (Submission to the ALRC, 16 November 2018) <<https://lawcouncil.au/resources/submissions/review-of-the-family-law-system-discussion-paper>>.

⁸ Law Council of Australia, *Joint Select Committee on Australia's Family Law System* (Submission, 20 December 2019) <<https://lawcouncil.au/resources/submissions/joint-select-committee-on-australias-family-law-system->>>.

⁹ Law Council of Australia, *Inquiry into family, domestic and sexual violence* (Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, 7 August 2020) <<https://lawcouncil.au/resources/submissions/inquiry-into-family-domestic-and-sexual-violence>>.

11. We have also made substantive submissions about specific law reform proposals within the family law system, which (at least in part) address the response to, and treatment of, family violence at the federal level. These include submissions to the:
- Senate Legal and Constitutional Affairs Legislation Committee about the:
 - Family Law Amendment (Parenting Management Hearings) Bill 2017;¹⁰
 - Family Law Amendment (Family Violence and Other Measures) Bill 2017;¹¹
 - Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018;¹²
 - Federal Circuit and Family Court of Australia Bills 2019;¹³
 - Family Law Amendment (Federal Family Violence Orders) Bill 2021;¹⁴
 - Family Law Amendment (Information-sharing) Bill 2023;¹⁵
 - Family Law Amendment Bill 2023;¹⁶ and
 - Council of Attorneys-General Family Violence Working Group about its 2019 consultation on options for improving the family violence competency of legal practitioners;¹⁷ and
 - Commonwealth AGD about:
 - the National Principles to Address Coercive Control;¹⁸
 - the exposure draft of the Family Law Amendment Bill (No. 2) 2023.¹⁹

¹⁰ Law Council of Australia, *Family Law Amendment (Parenting Management Hearings) Bill 2017* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 7 February 2018) <<https://lawcouncil.au/resources/submissions/family-law-amendment-parenting-management-hearings-bill-2017>>.

¹¹ Law Council of Australia, *Family Law Amendment (Family Violence and Other Measures) Bill 2017* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 7 February 2018) <<https://lawcouncil.au/resources/submissions/family-law-amendment-family-violence-and-other-measures-bill-2017>>.

¹² Law Council of Australia, *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 16 July 2018) <<https://lawcouncil.au/resources/submissions/family-law-amendment-family-violence-and-cross-examination-of-parties-bill-2018>>.

¹³ Law Council of Australia, *Federal Circuit Court and Family Court of Australia Bill 2019 and the Federal Circuit Court and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 2 April 2020) <<https://lawcouncil.au/resources/submissions/federal-circuit-court-and-family-court-of-australia-bill-2019-and-the-federal-circuit-court-and-family-court-of-australia-consequential-amendments-and-transitional-provisions-bill-2019>>.

¹⁴ Law Council of Australia, *Family Law Amendment (Federal Family Violence Orders) Bill 2021* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 25 June 2021) <<https://lawcouncil.au/resources/submissions/family-law-amendment-federal-family-violence-orders-bill-2021>>.

¹⁵ Law Council of Australia, *Family Law Amendment (Information-sharing) Bill 2023* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 2 June 2023) <<https://lawcouncil.au/resources/submissions/family-law-amendment-information-sharing-bill-2023>>.

¹⁶ Law Council of Australia, *Family Law Amendment Bill 2023* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 3 July 2023) <<https://lawcouncil.au/resources/submissions/family-law-amendment-bill-2023>>.

¹⁷ Law Council of Australia, *Options for improving the family violence competency of legal practitioners: Consultation Paper* (Submission to the Council of Attorneys-General Family Violence Working Group, 30 September 2019) <<https://lawcouncil.au/resources/submissions/options-for-improving-the-family-violence-competency-of-legal-practitioners-consultation-paper>>.

¹⁸ Law Council of Australia, *National Principles to Address Coercive Control* (Submission to the Attorney-General's Department, 5 December 2022) <<https://lawcouncil.au/resources/submissions/draft-national-principles-to-address-coercive-control>>.

¹⁹ Law Council of Australia, *Exposure Draft: Family Law Amendment Bill (No. 2) 2023* (Submission to the Attorney-General's Department, 24 November 2023) <<https://lawcouncil.au/media/news/family-law-amendment-bill-no-2-2023-exposure-draft>>.

12. We invite the Committee to have regard to these earlier submissions, to the extent that they are relevant to the current Inquiry. We also draw the Committee's attention to our *Justice Project* Final Report—the culmination of a national, comprehensive review of the state of access to justice in Australia for people experiencing disadvantage in 2017 and 2018.²⁰ A significant part of this Final Report focused on the legal needs of people who experience family violence.²¹ We commend this substantial piece of work to the Committee for its consideration.

Term of reference 1

13. Term of reference 1 requires the Committee to have regard to the risk of an escalation in the aggressive and violent behaviour of the perpetrator, and heightened risk to the partner and children, during FCFCOA proceedings.
14. It is well-recognised in the family law system that separation is a highly stressful and potentially dangerous event that is disproportionately associated with allegations of—and the likelihood of—family violence. According to Australia's National Research Organisation for Women's Safety, victim-survivors of family violence are at the highest risk of harm during, and immediately after, separation.²²
15. Many separating couples subsequently end up in the family law system, with the trajectory of family violence (or the risk of family violence) continuing throughout the proceedings, and, frequently, beyond. Aggression and violence in the context of family law proceedings can be evidenced in a variety of ways, including threats made to non-parties, such as legal practitioners, court staff, and judicial officers. In other cases, however, it can be challenging for a victim-survivor (or their legal representative) to provide evidence of the violence.
16. The Family Law Act recognises the profound effect of family violence on children and families, and this consideration is well established in the FCFCOA. Of note, the amendments to the Family Law Act that came into force in May 2024 emphasised the importance of prioritising the safety of children and their caregivers.²³ Whilst this is a welcome development, the family law system, as a whole, is not sufficiently equipped to address and respond appropriately to the complexities of family violence.
17. In recent years, national dialogue about coercive control, including in the context of the Standing Council of Attorneys-General developing the National Principles to Address Coercive Control in Family and Domestic Violence,²⁴ has supported a growing awareness of the dual risks of misidentification of victim-survivors of family violence and systems abuse. Indeed, we have previously warned of the importance of safeguarding against the risk of a perpetrator using the family law system as a

²⁰ Law Council of Australia, *The Justice Project* (Web Page, 2018) <<https://lawcouncil.au/justice-project/final-report>>.

²¹ Law Council of Australia, *The Justice Project: People who Experience Family Violence* (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf>>.

²² C Toivonen and C Backhouse, *National Risk Assessment Principles for domestic and family violence*, ANROWS (Report, 2018) <<https://www.anrows.org.au/research-program/national-risk-assessment-principles/>> 12.

²³ See *Family Law Amendment Act 2023* (Cth) and *Family Law Amendment (Information-sharing) Act 2023* (Cth).

²⁴ Attorney-General's Department, *The National Principles to Address Coercive Control in Family and Domestic Violence* (Web Page, 2024) <<https://www.ag.gov.au/families-and-marriage/publications/national-principles-address-coercive-control-family-and-domestic-violence>>.

mechanism to continue the control.²⁵ Care must be taken to ensure that the family law system cannot be readily misused as a tool to perpetuate further violence against those whom the system seeks to protect.

18. In addition, family lawyers are consistently required to navigate challenges in identifying and responding to concerns about family violence, without impacting their client's case, when that client is alleged to be a perpetrator of family violence. The inherently adversarial nature of family law proceedings requires lawyers to put their client's best case forward, consistent with their client's instructions (subject to that lawyer's overarching obligations to the court). This results in the potential to result in attempts by the alleged perpetrator of family violence to justify, minimise, or mutualise their alleged behaviour, rather than holding themselves accountable and forcing them to confront the impacts of their own behaviour.
19. Victim-survivors of family violence must be enabled to resolve their family law disputes in a manner that is safe, and free from further abuse from the perpetrator. In this respect, systemic change is needed to better address—and minimise—systems-abuse tactics and power imbalances between parties.

Risk management processes

20. The FCFCOA employs a variety of processes to screen, triage, and manage risks of family violence (among other interrelated risk factors, such as child abuse) in family law proceedings.
 - Since 1 November 2020, it has been mandatory for each party to file a Notice of Child Abuse, Family Violence or Risk (**Notice of Risk**) in every proceeding where parenting orders, or parenting and property orders, are sought.²⁶
 - In the 2022–23 financial year, 83 per cent of family law matters filed in the FCFCOA involved an allegation that a party has experienced family violence.²⁷ However, this statistic is not necessarily representative of the true level of risk being experienced by parties to proceedings in the FCFOCA, particularly as not all parties will be prepared to disclose information about risk in their filed court documents.²⁸
 - In addition, as the risk of family violence is dynamic, new risk issues might arise after the commencement of proceedings.²⁹ A person who becomes aware of new facts or circumstances that would amount to an allegation of child abuse or family violence is required to file a fresh Notice of Risk setting out those facts, supported by an affidavit.³⁰

²⁵ See Law Council of Australia, *Exposure Draft: Family Law Amendment Bill (No. 2) 2023* (Submission to the Attorney-General's Department, 24 November 2023) <<https://lawcouncil.au/media/news/family-law-amendment-bill-no-2-2023-exposure-draft>> 6 and *National Principles to Address Coercive Control* (Submission to the Attorney-General's Department, 5 December 2022) <<https://lawcouncil.au/resources/submissions/draft-national-principles-to-address-coercive-control>>.

²⁶ Federal Circuit and Family Court of Australia ('FCFCOA'), *FCFCOA Annual Reports 2022-23* (2023) <<https://www.fcfoa.gov.au/sites/default/files/2023-11/FCFCOA%20Annual%20Report%202022-23.pdf>> 13.

²⁷ *Ibid* 13-14.

²⁸ *Ibid* 13.

²⁹ *Ibid*.

³⁰ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 2.06.

- Lighthouse is a model approach taken by the FCFCOA to screen for, and manage, major risk factors for family law litigants, including family violence. Lighthouse focuses on identification of risk factors and safety by way of risk screening, triaging, and case management processes:³¹
 - Parties filing an eligible Initiating Application or Response to an Initiating Application will be asked to complete the Family Law Detection of Overall Risk screening questionnaire, via a confidential and secure online platform that can be accessed from any device. The questionnaire requires 'yes' or 'no' answers only, and is unable to be viewed by the other party.
 - A specialist team, comprised of Judicial Registrars, Triage Counsellors, and support staff, will assess and direct cases into the most appropriate case management pathway, based on the level of risk. The team will identify parties who may require additional support and safety measures, including online referrals, or interviews with those individuals deemed most at risk.
 - Those matters with the highest levels of risk, including a high risk of family violence, will be referred to be placed on the Evatt List—the specialist court list that focuses on early information gathering and intervention from the commencement of proceedings.³² Lower risk cases will be considered for a variety of case management pathways (including dispute resolution) in accordance with the level of risk and the Central Practice Direction: Family Law Case Management.³³
21. We are pleased that the Lighthouse pilot program was expanded nationally in November 2022.³⁴
22. The FCFCOA has also invested in delivering court-wide family violence training, based on Dr David Mandel's Safe and Together Model, to assist in assessing and responding to risk when children are involved, using a perpetrator pattern-based approach.³⁵
23. While risk management processes and employee training about family violence offer a degree of protection for litigants who interact with the FCFCOA, these do not—and cannot—eliminate the risks that exist, particularly those outside of the FCFCOA's processes and remit. This is of particular concern, given that the inherently adversarial nature of family law proceedings can create a risk of the escalation of violent, or aggressive, conduct between the parties.
24. In addition, when alleged perpetrators breach orders that have been made by the FCFCOA, there are often minimal consequences, because:
- victim-survivors may choose not to pursue a contravention application (or any other application) for fear of adverse consequences, such as reprisal by their ex-partner; or

³¹ FCFCOA, *Lighthouse overview* (Web Page, 2024) <<https://www.fcfcga.gov.au/fl/fv/lighthouse>>.

³² See FCFCOA, *Evatt List* (Web Page, 2024) <<https://www.fcfcga.gov.au/fl/lighthouse/evatt>>.

³³ FCFCOA, *Family Law Case Management* (Central Practice Direction) <<https://www.fcfcga.gov.au/fl/pd/fam-cpd>>.

³⁴ FCFCOA, *FCFCOA Annual Reports 2022-23* (2023) <<https://www.fcfcga.gov.au/sites/default/files/2023-11/FCFCOA%20Annual%20Report%202022-23.pdf>> 15.

³⁵ Safe and Together Institute, *Australian courts engage U.S. Based Safe & Together Institute to Undertake Family Violence-Focused Training* (26 April, 2021) <<https://safeandtogetherinstitute.com/australian-courts-engage-u-s-based-safe-together-institute-to-undertake-family-violence-focused-training/>>.

- even when a contravention application is pursued, this process can be cumbersome, expensive and lengthy, and will rarely lead to significant penalties being imposed on the respondent.
25. These risks must be addressed via a comprehensive and holistic range of measures at the federal and the state and territory level, including (at a minimum) greater funding and resourcing for the FCFCOA and its initiatives, increased funding—on an ongoing basis—for frontline legal and non-legal services and programs, sophisticated policing and criminal justice systems to respond to family violence, and ongoing investment in primary prevention measures.

Recommendation 1

- **A comprehensive and holistic range of measures must be employed at the federal and state/territory level in response to the risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during FCFCOA proceedings. Measures should include, at a minimum:**
 - **greater funding and resourcing for the FCFCOA, including its risk screening and triaging initiatives;**
 - **increased funding—on an ongoing basis—for frontline legal and non-legal services and programs;**
 - **sophisticated policing and criminal justice systems to respond to family violence; and**
 - **ongoing investment in primary prevention measures.**

Term of reference 2

26. Term of reference 2 requires the Committee to have regard to 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; and
 - (c) the availability of wrap-around support services and security for victims of violence.

(a) Difficulties attending multiple courts

The jurisdictional divide

27. We appreciate that this Inquiry has a narrow focus on what can be done at the federal level to better protect victim-survivors of family violence. However, any discussion of the framework at this level will require some consideration of the corresponding framework at the state/territory level. This is because the current system to address family violence simultaneously involves state/territory legislation for the purpose of FVOs, and federal legislation for the purpose of family law orders under the Family Law Act.

28. This framework leads to disjointed responsibilities of the state/territory and federal courts—a ‘jurisdictional divide’—where parties are required to navigate two distinct court systems to seek relief. As Dr Richard Ingleby observed in 2021 in the *Australian Law Journal*:

*... the reality for litigants is that there is no coherent “system” for personal protection in Australian family law. Rather, litigants are confronted with an ad hoc collection of processes for vindicating rights and remedies in different fora.*³⁶

29. The existing framework can increase the burden on family law litigants who are experiencing, or are at risk of, family violence. This includes the additional time, cost, complexity and stress of litigating in both forums, and being involved in proceedings (including providing evidence) relating to the same—often traumatic—circumstances. This framework also increases the burden on other stakeholders, such as police, who are often the applicants for FVOs.³⁷
30. This increased complexity and cost can especially compound the systemic barriers that traditionally marginalised groups can face in accessing justice, including First Nations peoples, culturally and linguistically diverse people, people living with a disability, and individuals living in RRR areas.
31. In these circumstances, victim-survivors (especially those who are self-represented) may decide not to proceed with obtaining the necessary orders, or may agree to consent orders that are not safe for, or in the best interests of, their child or themselves. These decisions are understandable when victim-survivors are faced with the prospect that:
- they may be required to repeatedly encounter the perpetrator;
 - they may escalate conflict in the proceedings; and
 - their engagement in proceedings may lead to a less favourable outcome for themselves, or their children.
32. These systemic challenges were considered in detail by the ALRC in its 2019 inquiry entitled *Family Law for the Future: An Inquiry into the Family Law System (ALRC Final Report)*, culminating in several recommendations targeted at ‘closing the jurisdictional gap’.³⁸
33. One such recommendation, which can be described as the ‘signature reform’ proposed by the ALRC in its Final Report, was that the Australian Government should consider options to establish family courts in all states and territories, to exercise jurisdiction concurrently under the Family Law Act, as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts.³⁹

³⁶ Dr Richard Ingleby, ‘Section 114AB: Semantics and Chaos’ (2021) *The Australian Law Journal* 95(5) 320, 321.

³⁷ National Legal Aid, *How do Domestic Violence Orders get made?*, Family Violence Law Help (Web Page, 2024) <<https://familyviolencelaw.gov.au/domestic-violence-orders/how-do-domestic-violence-orders-get-made/>>.

³⁸ ALRC, *Family Law for the Future: An Inquiry into the Family Law System* (Report 135, March 2019) <<https://www.alrc.gov.au/publication/family-law-report/>> 113 [Recommendation 1], 146 [Recommendation 2], 152 [Recommendation 3].

³⁹ *Ibid* 113 [Recommendation 1].

34. The Law Council did not support this recommendation at the time of the ALRC Final Report, nor do we support it now. The implementation of this recommendation would involve a herculean task that would require a degree of cooperation between the states, territories and Commonwealth that is almost unheard of, and would likely take at least a decade to achieve. Further, the outcome of achieving such a goal is likely to be a fragmentation in the delivery of family law services on a state-by-state basis—without uniform funding, rules and systems. As a result, outcomes will inevitably diverge between jurisdictions over time.
35. In any event, we note that the Australian Government (at that time) did not accept this recommendation in its response to the ALRC Final Report.⁴⁰

Information-sharing

36. Effective information-sharing between jurisdictions is crucial to ensuring that parties, police, and the courts have visibility of all relevant orders. However, we have received feedback expressing concerns about a lack of integrated judicial oversight of matters between different courts, with the relevant courts operating at times as ‘silos’. This is despite the fact that FVOs can, and do, overlap—or conflict with—orders made under the Family Law Act, especially when they are in force at the same time.
37. This separation can be particularly problematic, given the competing priorities underpinning the orders, and the need to balance facilitating contact between a child and a parent, and the need to protect individuals from family violence.⁴¹ As a result, limited communication between courts and other services can pose considerable challenges for victim-survivors and/or self-represented litigants, and may also lead to inconsistent decision making by the courts.
38. We strongly support efforts by the Australian Government to improve the process for information sharing between jurisdictions and enhance the capacity of the family law courts to properly assess the risk of family violence, abuse and neglect, and make decisions that prioritise safety.⁴² Proper information sharing between courts would reduce the expense to parties and enhance safety, by ensuring that the FCFCOA has complete and current information about FVOs made in states/territories and can, therefore, make compatible parenting orders.
39. As a result of its information-sharing protocols with police and child welfare authorities, as well as the passage of time, the FCFCOA may be in the possession of information that was not available to the state or territory court that made the FVO. The FCFCOA may, therefore, be in a position to make an updated assessment of risk, and make orders that complement existing FVOs and enhance the safety of family law litigants. This is particularly useful where, for example, the state/territory FVO includes mandatory conditions only.
40. We are pleased that the Australian Government has committed to extending the pilot of co-locating state and territory child protection and policing officials in family law

⁴⁰ Australian Government, *Government Response to ALRC Report 135: Family Law From the Future: An Inquiry into the Family Law System* (March 2021) <<https://www.ag.gov.au/families-and-marriage/publications/government-response-alrc-report-135-family-law-future-inquiry-family-law-system>> 8-9.

⁴¹ The National Council to Reduce Violence against Women and their Children, *Domestic violence laws in Australia* (Report, June 2009) <https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf>.

⁴² See Law Council of Australia, *Family Law Amendment (Information-sharing) Bill 2023* (Submission to the Senate Legal and Constitutional Legislation Committee, 2 June 2023) <<https://lawcouncil.au/resources/submissions/family-law-amendment-information-sharing-bill-2023>> 5.

court locations across Australia (**Co-location Pilot**) to 30 June 2025.⁴³ We recommend that this initiative be continued beyond mid-2025, noting feedback from several of our Constituent Bodies that this pilot has been helpful.

41. In addition, the commencement of the *Family Law Amendment (Information Sharing) Act 2023* (Cth) (**Information Sharing Act**) in May 2024 gave effect to key aspects of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems. The Information Sharing Act creates national consistency in preliminary information-sharing processes, and expands the scope of information able to be sought from agencies through new information-sharing orders.⁴⁴ Pleasingly, the FCFCOA is now equipped to inform itself more easily of the parties' family violence history, without the need for the parties to repeat their evidence. While this is a positive development, we understand that these orders are not yet widely sought, or made, so it is premature for us to comment on the operation of these provisions.
42. The importance of prompt information sharing is particularly clear in urgent matters, such as ex parte applications for recovery orders. Ongoing and sufficient funding for information-sharing processes with the FCFCOA, information-sharing agencies, and state and territory courts, including the Co-location Pilot, is critical and must be prioritised, to ensure that risk is identified and responded to appropriately.
43. We also recommend that technological solutions to support information sharing be progressed. It was announced in 2021 that the AGD would commission a scoping study to address this,⁴⁵ but there does not appear to have been any publicly reported progress since. As a first step, we encourage the Committee to seek an update from the AGD on the status of the scoping study.

Recommendation 2

- **Ongoing and sufficient funding for information-sharing processes with the FCFCOA, information-sharing agencies, and state and territory courts, including the extension of the Australian Government's Co-location Pilot beyond mid-2025, must be prioritised.**

Recommendation 3

- **Technological solutions to support information sharing must be progressed. As a first step, the Committee should seek an update from the AGD on the status of the scoping study.**

⁴³ See Attorney-General's Department, *Evaluation of the Co-Location Pilot* (Final Report, March 2022) <<https://www.ag.gov.au/sites/default/files/2023-08/co-location-pilot-evaluation-final-report.PDF>>.

⁴⁴ Explanatory Memorandum, Family Law Amendment (Information-sharing) Bill 2023.

⁴⁵ Australian Government, *Implementation Plan: National Plan to Reduce Violence against Women and their Children 2010-2022* (Web Page, October 2021) <<https://plan4womenssafety.dss.gov.au/initiative/co-location-of-state-and-territory-child-protection-and-other-officials-in-family-law-court-registries/>>.

Enforcing FVOs

44. Although the National Domestic Violence Order Scheme (**National DVO Scheme**) provides that all FVOs issued in an Australian state or territory after 25 November 2017 are automatically recognised and enforceable across Australia,⁴⁶ we have received feedback that victim-survivors do not always find it easy to obtain protection under this Scheme, especially when there is no evidence of physical violence.
45. Powers of arrest are given to police in the Family Law Act,⁴⁷ and ‘police officer’ is defined in section 4 to mean a member of the Australian Federal Police or a member of the police force of a state or territory. However, enhanced police education and awareness must be provided by state and territory governments to support the effectiveness, and enforcement, of FVOs, including:
- reassurance that the powers under the Family Law Act can, and should, be used for the purposes of enforcing an FVO; and
 - specific guidance on how to deal with, and ensure fairness for, individuals who are arrested for breaching an FVO (e.g., how to bring an arrested person to court as soon as practicable when that court is the FCFCOA, and where that person should be held if the arrest occurs after hours).

Recommendation 4

- **The Australian Government must encourage state and territory governments to improve police education and awareness to support the effectiveness, and enforcement, of FVOs, including:**
 - **reassurance that the powers under the Family Law Act can, and should, be used; and**
 - **specific guidance on how to deal with, and ensure fairness for, individuals who are arrested for breaching an FVO.**

⁴⁶ Attorney-General's Department, *National Domestic Violence Order Scheme* (Web Page, 2024) <<https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme>>.

⁴⁷ See, e.g., *Family Law Act 1975* (Cth) ss 68C, 68P, 114AA, 122A.

(b) Intersection between FVOs and parenting orders

46. The parties who are engaged in family law proceedings in the FCFCOA typically have complex needs prior to commencing litigation, with litigation then becoming an additional significant stressor. The fact that parties are embroiled in disputes about time arrangements for children, including court proceedings, demonstrates that they are having difficulty agreeing on issues relevant to the best interests of the child. Their interactions, therefore, are likely to be defined by conflict and a lack of trust.⁴⁸
47. Data collated by the FCFCOA highlights the vulnerability of parties who interact with the family law system. In the 2022–23 financial year:
- 86 per cent of applications for parenting matters, or parenting and property matters, involved allegations of two or more risk factors;⁴⁹
 - 79 per cent of matters involved allegations of three or more risk factors; and
 - 69 per cent of matters involved allegations of four or more risk factors.⁵⁰
48. As a result, many parties commencing proceedings in the FCFCOA with FVOs already in place may require more stringent orders to address the increased risk that is presented by the litigation process.
49. Sections 68P and 68Q of the Family Law Act deal with the intersection of orders made under the Family Law Act and FVOs. While we understand that, generally, interim orders made by the FCFCOA are consistent with existing FVOs, the following concerns have been expressed by several of our Constituent Bodies:
- Family law litigants can be uncertain or confused as to the legal intersection of FVOs and parenting orders, especially ‘spend time’ orders and changeover arrangements. This uncertainty can lead to misinterpretations of the effect of FVOs, and this can intensify conflict between the parties, and heighten risk.
 - The relationship between FVOs and parenting orders can be misunderstood by police. This can result in police declining to enforce an FVO provision that is still active, and/or the undermining of parenting orders that have been put in place to protect the safety of a party and their children.
 - Uncertainty exists as to whether the FCFCOA can make orders that complement existing orders, and enhance safety, without falling foul of section 114AB of the Family Law Act, which limits the entitlement of a person to seek an injunction in the FCFCOA.⁵¹ The implications of section 114AB are discussed further below, in response to term of reference 4.

⁴⁸ See Law Council of Australia, *Family Law Amendment Bill 2023* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 3 July 2023) <<https://lawcouncil.au/resources/submissions/family-law-amendment-bill-2023->> 26.

⁴⁹ FCFCOA, *FCFCOA Annual Reports 2022-23* (2023) <<https://www.fcfcOA.gov.au/sites/default/files/2023-11/FCFCOA%20Annual%20Report%202022-23.pdf>> 14.

⁵⁰ *Ibid.*

⁵¹ See Dr Richard Ingleby, ‘Section 114AB: Semantics and Chaos’ (2021) *The Australian Law Journal* 95(5) 320, 321.

50. The Committee may also wish to consider the operation of specialist court lists in various jurisdictions, such as the Specialist Family Violence List Pilot in the Local Court of New South Wales, which began its pilot in September 2023.⁵² One of the aims of this Specialist List is to ensure that ADVOs are consistent with other court orders (i.e., bail conditions and Children's Court orders) and to also consider consistency with any existing family law orders.⁵³

Overriding an FVO with a parenting order

51. We query the implication in term of reference 2 that the ability of the FCFCOA to override an FVO is a barrier to enforcement that requires adjustment. This issue relates to section 68Q of the Family Law Act, which provides that, if a family law parenting order is inconsistent with an FVO, then the parenting order prevails. This is because decisions made through the exercise of federal jurisdiction will prevail over decisions made through the exercise of state/territory jurisdiction.
52. It is important to note that a section 68Q order is made following consideration of each parties' sworn evidence (usually given by affidavit) by a judicial officer of the FCFCOA. The FCFCOA will have the benefit of a copy of any FVO, prior to the making of the section 68Q order. In contrast, an FVO is often made on the sworn evidence of an applicant only, in the absence of the respondent.
53. We understand that this provision is most often applied by the FCFCOA when the matter is first heard, in situations where a party has obtained an urgent (and usually ex parte) FVO. As children are routinely included as 'Aggrieved or Affected Family Members' on this ex parte order, section 68Q of the Family Law Act is important where the FCFCOA forms the view, based on evidence from both parties, that children should spend time with the non-resident parent.
54. As a result of Subdivision DA of the Family Law Act (inserted by the Information Sharing Act), the FCFCOA can make orders for the sharing of records held by state/territory police and child protection agencies about parties within the family law system. As discussed above in response to term of reference 2(a), the FCFCOA will likely have access to more ancillary information than a local court hearing an application for an FVO, which is relevant to the safety of victim-survivors, or otherwise.
55. Further to the ability to obtain information from agencies, there are processes to obtain single expert reports from family consultants, psychologists, or social workers, who specialise in risk assessment and provide recommendations to the FCFCOA about parenting orders, including orders relating to safety. These single expert reports are an opportunity for children, who are the subject of proceedings, to be interviewed and to express their views and concerns.
56. Once obtained, FVOs are difficult to vary prior to a contest when the evidence is tested, and it could be many months before a matter is listed for contest. While it is clear that a majority of FVO applicants legitimately require protection, we are aware of instances where FVOs are obtained for an ulterior purpose (e.g., by the alleged perpetrator) to facilitate systems abuse or to gain a perceived strategic advantage in a family law dispute.

⁵² Local Court of New South Wales, *Annual Review 2023 (2024)* <https://localcourt.nsw.gov.au/documents/annual-reviews/24-1745_DCJ_Local_Court_Annual_Report_2023_v06_digital.pdf> 9-10.

⁵³ Local Court of New South Wales, *Specialist Family Violence List Pilot Practice Note (2024)* <https://localcourt.nsw.gov.au/documents/practice-notes/Practice_Note_-_Specialist_Family_Violence_List_Pilot_v.1.1.pdf>

57. For example, we are aware of instances where one parent (the alleged perpetrator of family violence) obtains an FVO against the other parent as a form of evidence against that other parent, and as a means of intimidating and exerting pressure on them to agree to less favourable parenting orders. In this regard, we note the findings of a 2014 study, conducted by Women's Legal Services New South Wales, that:
- two thirds of clients defending FVOs were the victims of violence in their relationships; and
 - less than 40 per cent of those clients had a final Apprehended Domestic Violence Order made against them.⁵⁴
58. It is, therefore, important that the FCFCOA is empowered to make orders that prevail against FVOs in circumstances where evidence is presented in support of this, and where it is safe to do so. We recommend that oversight of orders continues to be held by the FCFCOA, as this court will typically have access to more evidence than the relevant local court will.

Recommendation 5

- **The Australian Government must encourage and assist states and territories to provide clear and accessible guidance and educational resources to the community, including police, about the legal intersection of FVOs and parenting orders.**

(c) Availability of wrap-around support services

59. Effective measures to reduce the barriers for family law litigants to seek and enforce FVOs—including barriers associated with the jurisdictional divide and the intersectionality of FVOs and parenting orders—include ensuring the availability of wrap-around, multijurisdictional legal and non-legal support services.
60. The capacity of these support services to meet the complex needs of individuals and families depends on them receiving adequate, ongoing funding. For the most part, this is not occurring and must be addressed as a priority.

Legal assistance and other support

61. Each of the three legal assistance services funded under the NLAP 2020–25 Agreement—Legal Aid Commissions (**LACs**), Community Legal Centres (**CLCs**), and Aboriginal and Torres Strait Islander Legal Services (**ATSILS**)—play an important, unique, and complementary role in providing legal help to people and communities across Australia, including in the family law and criminal law jurisdictions. Family Violence Prevention Legal Services (**FVPLSs**), which are not currently funded through the NLAP framework, also play a critical role.⁵⁵
62. The specific role that is played by each of these services at different stages, from prevention through to court representation—and the distinct groups that they serve—must be carefully considered in light of the varying needs of individuals in the family

⁵⁴ Women's Legal Services NSW, *Women Defendants to AVOs: What is their experience of the justice system?* (Report, March 2014) <<https://www.wlsnsw.org.au/wp-content/uploads/womendefAVOsreport.pdf>>.

⁵⁵ See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission to Dr Warren Mundy, Independent Reviewer, 27 October 2023) <<https://lawcouncil.au/resources/submissions/independent-review-of-the-national-legal-assistance-partnership>>.

law system (including both victim-survivors and alleged perpetrators of family violence).

63. The Australian Government has a responsibility to adequately fund legal assistance, especially in family law. Yet, successive Governments have failed to meet this responsibility. The inadequate level of funding provided under the NLAP for the legal assistance sector has created several specific issues, each of which is contributing to unmet legal need in Australia, including for those affected by family violence:
 - The legal aid means tests are set at unacceptably high levels. Most Australian households—even those experiencing significant disadvantage—will not be eligible.
 - There are limitations on the quality of service that can be provided, as well as limitations on the provision of holistic services.
 - There are significant impacts on the ability for legal assistance services to attract and retain quality staff, as well as the ability of the private profession to contribute. This is especially pronounced in RRR areas, where there are shrinking service footprints.⁵⁶
64. It is critical to recognise that the private legal profession also has a key function in the delivery of publicly-funded legal services, most notably in supporting complex legal problems that require representation and advocacy, including family law matters.⁵⁷ This is because the Australian legal aid system operates under a ‘mixed model’ of service delivery, where LACs brief out matters to members of the private legal profession at significantly reduced rates. This model—which has been recognised by the Productivity Commission and independent reviewers as critical to sustainable service delivery nationally⁵⁸—allows LACs to draw on both in-house expertise and the experience, acumen and geographic reach of the private profession.
65. According to the recent *Justice on the Brink* Report, prepared by Impact Economics and Policy for National Legal Aid, 72 per cent of legal aid approved matters are assigned to private practitioners.⁵⁹ However, as has been foreshadowed for more than a decade, it is now increasingly financially unviable for the private profession to offer support to legal aid clients, especially in RRR communities. We have received data indicating that, across a range of family law property and parenting disputes, payments received from LACs are consistently only 25 to 30 per cent of what would otherwise been received, had the same matter been taken on privately.
66. While it is not expected that legal aid payments to the private profession should match privately agreed rates, they should be set at a fair and reasonable level that supports practitioners to sustain an effective and viable legal aid practice. Consequently, there is a real and increasing threat of supply failure for the provision of family law legal aid work by private practitioners, as it has become unsustainable for legal practitioners to take on this work. We are anecdotally aware of entire regions in which individuals and families are missing out, given this supply failure. The provision of legal aid helps to protect the safety and rights of individuals, and greatly enhances their capacity to rebuild their lives and care for their children.

⁵⁶ Ibid 12.

⁵⁷ Ibid.

⁵⁸ See Productivity Commission, *Access to Justice Arrangements* (Inquiry Report 72, 2014) <<https://www.pc.gov.au/inquiries/completed/access-justice/report>> 724-726 and Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>> 136-137.

⁵⁹ Impact Economics and Policy, *Justice on the Brink: Stronger Legal Aid for a Better Legal System*, National Legal Aid (Report, November 2023) <<https://www.nationallegalaid.org/resources/justice-on-the-brink/>> 18.

67. If the Australian Government is genuinely committed to supporting individuals who have been impacted by, and are escaping, family violence, it must urgently act to address this funding crisis. At a minimum, the Commonwealth should return to a 50 per cent share of legal aid funding with the states and territories. This situation will only deteriorate without urgent action.
68. We call upon all Parliamentarians to engage closely with this priority issue if they are serious about addressing family violence nationally and within their own constituencies.

Family Advocacy and Support Service and Domestic Violence Units

69. The effectiveness of support services, such as the Family Advocacy and Support Service (**FASS**)—an integrated duty lawyer and social worker service in each state and territory for people affected by family violence (both victim-survivors and alleged perpetrators)⁶⁰—was recognised in the ALRC Final Report:

The lawyers engaged in FASS (as the review of the pilot scheme showed), had the great advantage of being involved in both state and federal jurisdictions. They were shown in the review to be able to smooth the pathways, to reduce the confusion and to increase the provision of needed information to the litigants.⁶¹

70. However, we understand that, in some locations, challenges exist in respect of the availability of duty lawyer services, such as duty lawyers not being available in person during the full sitting hours of the FCFCOA. While most FASS have telephone services, reduced in-person availability in some locations can result in court delays and inadequate representation for parties.
71. In addition, domestic violence units (**DVU**) provide tailored legal assistance and other holistic support, and can assist clients to access services such as financial counselling, tenancy assistance, trauma counselling, emergency accommodation, and employment services.⁶² Providers in each state and territory operate specialist DVUs, some of which also operate health justice partnerships, where lawyers work at hospitals and health centres to ensure that victim-survivors can access legal assistance in a safe location.⁶³
72. Adequate, ongoing funding of the FASS, and other relevant frontline family violence services, such as DVUs, is essential. Yet, the NLAP Review Report observes that the FASS and the DVU are currently funded under time-limited arrangements that align with the duration of the NLAP agreement, and that future funding arrangements will be made in the context of the next agreement, commencing on 1 July 2025.⁶⁴ This has workforce implications for some LACs.
73. The NLAP Review Report highlights the chronic underfunding of Australia's legal assistance sector, and we implore the Committee to have close regard to its findings and recommendations. In particular, the NLAP Review Report makes a range of recommendations to address this significant shortfall and its adverse impacts on the

⁶⁰ National Legal Aid, *Family Advocacy and Support Service*, Family Violence Law Help (Web Page, 2024) <<https://familyviolencelaw.gov.au/fass/>>.

⁶¹ ALRC, *Family Law for the Future: An Inquiry into the Family Law System* (Report 135, March 2019) <<https://www.alrc.gov.au/publication/family-law-report/>> [4.120].

⁶² Attorney-General's Department, *Specialist domestic violence assistance* (Web Page, 2024) <<https://www.ag.gov.au/legal-system/legal-assistance-services/specialist-domestic-violence-assistance>>.

⁶³ *Ibid.*

⁶⁴ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>> 67.

community, including \$459 million in funding for legal assistance services in civil and family law in 2025–26,⁶⁵ and funding for grants of legal aid to be set at court scales and reflected in baseline funding for LACs.⁶⁶

74. We welcome and strongly endorse other key recommendations in the NLAP Review Report, including those targeted towards better justice outcomes for First Nations peoples, support for the long-term capabilities of those in the legal assistance workforce, and the need for improved data collection to support evidence-based decision making.
75. The NLAP Review Report findings and recommendations are discussed further below, in response to term of reference 3(c), and form the basis of Recommendation 10 of this submission.

Support for defendants

76. This Inquiry must not lose sight of the perspective of the defendant in family violence matters (typically, the alleged perpetrator), and how Australia's legal system must also balance the interests of the accused, in addition to those of the victim-survivor. This is critical to ensuring a fair justice system whose findings are ultimately respected by all parties.
77. There are positive indications of the value of investing in wrap-around legal and non-legal assistance for defendants in family violence matters. The Committee may wish to have regard to approaches taken in state and territory jurisdictions in this regard, such as the Respondent Early Assistance Legal Service (**REALS**) in Darwin and Alice Springs (part of the divergent Northern Territory FASS model), and the pilot Apprehended Domestic Violence Order (**ADVO**) defendant pilot program at the Mount Druitt Local Court in New South Wales in 2011.
78. The aim of the Mount Druitt ADVO defendant pilot program was to test the proposition that providing holistic minor assistance and duty representation to defendants in ADVO matters reduces future legal problems in the areas of crime, civil and family law.⁶⁷ The pilot was evaluated after 12 months, and the Final Review Report noted positive early trends, including:
 - reductions in breach rates;
 - no breaches for final orders that had been tailored in relation to children;
 - no breaches for matters that had been adjourned for legal advice through the pilot;⁶⁸ and
 - providing representation for defendants reduced issues with self-represented defendants denigrating victim-survivors in the courtroom.⁶⁹
79. These findings illustrate the value of ensuring that defendants in family violence matters are able to access appropriate supports.

⁶⁵ Ibid 58 [Recommendation 5].

⁶⁶ Ibid 139 [Recommendation 18].

⁶⁷ Legal Aid New South Wales, *ADVO Defendant Pilot: Mount Druitt Local Court* (Final Review Report, June 2013) <<https://anrows.intersearch.com.au/anrowsjspui/bitstream/1/18709/1/Mt-Druitt-pilot-Final-Review-Report-June-2013.pdf>> 3.

⁶⁸ Ibid 11.

⁶⁹ Ibid 12.

Referrals to appropriate services

80. Individual experiences of support service engagement can be mixed, and, in some cases, can result in disconnected and ineffective outcomes.
81. We have received feedback that the availability of structurally safe and appropriate wrap-around services is limited, and minority communities experience ongoing bias and discrimination when accessing services. In some jurisdictions, there is limited access to specific services, such as for alleged perpetrators, adolescents, or for LGBTQIA+ victim-survivors.
82. The FCFCOA routinely refers litigants to family violence services in matters involving risk. However, we understand that the FCFCOA has no direct pathway to refer to men's behaviour change programs, family violence counselling or other services—save for Indigenous Family Liaison Officers, who also refer to services.
83. We understand that the FCFCOA has recently requested funding to establish its own Domestic and Family Violence Perpetrator Program. We support this proposal and consider that integrating the pathway to—or delivery of—programs such as this would significantly enhance the ability of the FCFCOA to support parties, promote behavioural change, and implement orders that have a meaningful impact on risk.

Culturally appropriate assistance

84. It is essential that wrap-around support services are accessible—including in RRR areas—and that they are culturally appropriate and trauma-informed, to enable parties to engage in the legal process safely and meaningfully.
85. In addition to the ongoing efforts of ATSILS and FVPLSs, the FCFCOA has specialised services available to assist First Nations people, including Indigenous Family Liaison Officers, and Specialist Indigenous Lists.⁷⁰ While these are welcome initiatives, we acknowledge that First Nations people are navigating legal systems that were not designed for (or with) them, and of which they tend to be—understandably—deeply suspicious.
86. Individuals who have previously had negative interactions with the police and justice system are likely to have suspicions around enforcing FVOs and trusting the legal system to protect them.⁷¹ Consideration should, therefore, be given to:
 - enabling Specialist Indigenous Lists to assist in the resolution of all issues between family members, including any family violence orders, where the families agree to this; and
 - including references to these Lists within the relevant legislation and corresponding rules to entrench this process within the legislative framework.
87. The availability of adequate interpreters for First Nations people and other culturally and linguistically diverse litigants is another point of difficulty, especially where the availability of duty lawyers and interpreters does not align, including at the time of the relevant FCFCOA hearing. When such a person has been affected by family violence, interpreters play an essential role at every stage of the justice process and are a core

⁷⁰ FCFCOA, *Indigenous Family Liaison Officers* (Web Page, 2024) <<https://www.fcfcOA.gov.au/fl/pubs/iflo-national>> and *Indigenous List*.

⁷¹ See Distinguished Professor Bronwyn Carlson, Madi Day, and Dr Terri Farrelly, *What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence*, ANROWS (Research Report 2, April 2024) <<https://www.anrows.org.au/publication/what-works-a-qualitative-exploration-of-aboriginal-and-torres-strait-islander-healing-programs-that-respond-to-family-violence/>>.

component of procedural fairness in the civil justice system. Yet, serious gaps continue to exist in the availability of interpreter services, especially in RRR areas. There is also a lack of appropriately qualified interpreters for certain language groups, particularly for rare dialects, which significantly impacts access to justice for those cohorts.⁷²

88. Concerningly, if a victim-survivor of family violence is unable to access a suitably qualified interpreter, especially at an early stage, they may be unable to engage meaningfully with the justice system, and may not receive the protection or remedies that they require—ultimately putting their safety and wellbeing at risk.⁷³

Recommendation 6

- **Wrap-around, culturally appropriate support services—including qualified interpreters—must be available and accessible, including to defendants in family violence matters, to enable parties to engage in each stage of the legal process safely and meaningfully.**

Recommendation 7

- **A pathway to, or the delivery of, services and programs should be integrated into the FCFCOA, with corresponding funding, including tailored programs for perpetrators of family violence.**

Term of reference 3

89. Term of reference 3 requires the Committee to have regard to 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 FCFCOA; and
- (c) the legal and non-legal support services required to promote early identification of and response to family violence.

(a) Making it easier to apply for and enforce an FVO

90. We understand that many family law litigants have already availed themselves of a state/territory FVO, including with police assistance, by the time that proceedings are commenced in the FCFCOA. Timeliness in the issuing of FVOs is critically important when considering the risk of escalation in aggressive and violent behaviour of an alleged perpetrator and heightened risk to the partner and children during proceedings in the FCFCOA.

⁷² See Law Council of Australia, *The Justice Project: Courts and Tribunals* (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Courts%20and%20Tribunals%20%28Part%20%29.pdf>> 42-46; *The Justice Project: Critical Support Services* (Final Report, August 2018) <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Courts%20and%20Tribunals%20%28Part%20%29.pdf>> 46-50.

⁷³ *Ibid.*

91. For this reason, any initiatives aimed at facilitating the initial making of FVOs are not necessarily best placed within the family law system. We consider they would be better addressed at the state and territory level, which falls beyond the remit of this Inquiry.
92. Similarly, as the breach of an FVO is a criminal matter in each state and territory,⁷⁴ where police are afforded a range of significant powers with regards to enforcement, issues with respect to making it easier to enforce an FVO are better addressed at the state and territory level. Any proposal to increase police powers for enforcing FVOs should be viewed carefully and critically, just as any proposal to direct police in how they ought to respond to reports of FVO breaches should be subject to close scrutiny.
93. The more important issue is that the FVOs correctly identify the person most in need of protection, that the orders provide adequate protection (including in respect of the duration of the order) while remaining reasonable and proportionate to the identified risks, and that the FCFCOA has current information about the orders and the opportunity to supplement them, if necessary.
94. In addition, care must be taken to ensure that any broadening of the accessibility of FVOs—or of the ability to enforce them—does not result in undue limitations on the rights of respondents in relation to those orders, including the right to a fair hearing.
95. Despite their temporary nature, interim FVOs can impose wide-ranging conditions, that may immediately bar respondents from their homes, impact their freedom of movement, or limit access to their children. Further, interim orders often cause difficulties when made against marginalised and potentially vulnerable members of the community, including people living with an intellectual disability. The challenges for respondents to comply in these circumstances can result in individuals being arrested, charged, and remanded without necessarily understanding why.
96. It is not uncommon for respondents to interim FVOs to make an application for FVOs, against their alleged victims. Given that interim FVOs can (by design) be obtained on relatively limited evidence, there is the potential for misuse of the system. Further, the misidentification of victims is a real concern when police attend at family violence incidents and become the applicants in FVO proceedings.
97. This is not to suggest that further measures to increase the accessibility of FVOs will inherently be a concern. However, the right to a fair hearing and procedural fairness must necessarily be considered, given the operation of the existing legal framework. As such, opportunities remain at the federal level to enhance the effectiveness of FVOs, outlined below.

Police education

98. We are concerned that, in practice, the ways that police understand, and respond to, complex family violence, is highly variable—not just between jurisdictions, but within them.
99. There may, therefore, be opportunities at the federal level to encourage nationally consistent police responses to family violence by assisting in the development of consistent police training, such as the Prevent Assist Respond Training (**PART**) in the

⁷⁴ National Legal Aid, *What happens if someone breaks a Domestic Violence Order?*, Family Violence Law Help (Web Page, 2024) <<https://familyviolencelaw.gov.au/domestic-violence-orders/what-happens-if-someone-breaks-a-domestic-violence-order/>>.

Northern Territory,⁷⁵ aimed at operational and cultural improvement, with a focus on enhanced interaction with the family law system, misidentification of the victim-survivor and alleged perpetrator, and non-collusive practice between the health sector and police.

100. We are also pleased to note that the National Plan commits to measures that ‘ensure people have positive experiences when reporting experiences of violence to police and specialist services’⁷⁶ and ‘improve police responses to gender-based violence’.⁷⁷ This includes ensuring a survivor-centred approach for victim-survivors, and strengthening police responses, including training workforces.⁷⁸

Risk screening and case management

101. The reluctance of victim-survivors in the family law system to seek and/or enforce FVOs—and the potential for FVOs to be weaponised in the family law system—suggests that there is a need for the FCFCOA to have greater visibility over family violence risk at all stages of proceedings. This would provide broader scope for the FCFCOA to identify risk (including heightened risk) and respond by way of referrals and case management.
102. Consideration could be given to the following:
- Lighthouse providing risk screening at the highest risk points throughout FCFCOA proceedings, not just at an early stage.
 - Access at every stage to referral pathways to legal assistance services, and to therapeutic, social and multi-disciplinary support services.
 - Broadening the use of intensive case management approaches, similar to those used in the Evatt and Magellan Lists,⁷⁹ for use in both property and parenting matters involving allegations of significant family violence against parties or their children. Features of this type of intensive case management could include the use of multi-disciplinary teams to minimise the risk of harm to vulnerable parties, as well as referrals to legal assistance services.

Judicial guidance

103. The FCFCOA should have a role in actively clarifying the practical effect of parenting orders where an FVO is in place, or is likely to be sought. When making parenting orders, judicial officers should be encouraged to explain the matter to the parties as far as possible, in practical terms. Ideally, to limit the potential for confusion and misinterpretation, judicial officers should adopt the language of the relevant state or territory FVO.
104. In some cases, it may be appropriate for the FCFCOA to make orders that are clearly intended to ‘cover the field’ and exclude the operation of an FVO made while they are in effect.

⁷⁵ PART: Prevent Assist Respond Training for NT Police and Health Workers (Web Page, 2024) <<https://doyourpart.com.au/>>.

⁷⁶ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022-2032* (2022) <https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf> 27.

⁷⁷ Ibid 28.

⁷⁸ Ibid 65, 71.

⁷⁹ See FCFCOA, *Evatt List* (Web Page, 2024) <<https://www.fcfcga.gov.au/fl/lighthouse/evatt>> and *Magellan List* (Web Page, 2024) <<https://www.fcfcga.gov.au/fl/fv/magellan-list>>.

National electronic database of FVOs

105. We support the establishment of a national electronic database of FVOs and have previously suggested that developing such a database would, importantly, reduce the delays associated with courts obtaining the relevant records.⁸⁰
106. We understand that, following recommendations previously made by the ALRC and the New South Wales Law Reform Commission in 2010⁸¹ (in addition to those of this Committee in 2021),⁸² the creation of a national electronic database is being overseen by the AGD.⁸³ As such, the completion of this initiative—with appropriate funding—should be prioritised.
107. A national database will improve the operation of the National DVO Scheme in enabling victim-survivors to enforce FVOs nationally. It will also facilitate the use of information-sharing orders as a tool for assessing risk in family law matters, by providing a valuable resource to inform state and territory agency responses to these orders.
108. The national database should record:
- provisional, interim, and final FVOs;
 - any breaches;
 - orders made under the Family Law Act; and
 - relevant child protection orders made under state or territory legislation.

⁸⁰ See Law Council of Australia, *Inquiry into family, domestic and sexual violence* (Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, 7 August 2020) <<https://lawcouncil.au/resources/submissions/inquiry-into-family-domestic-and-sexual-violence>> 13; *Family Law Amendment (Federal Family Violence Orders) Bill 2021* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 25 June 2021) <<https://lawcouncil.au/resources/submissions/family-law-amendment-federal-family-violence-orders-bill-2021>> 23.

⁸¹ ALRC and NSW Law Reform Commission, *Family Violence—A National Legal Response* (Report 114, November 2010) <<https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/>> [Recommendations 30-15; 30-18].

⁸² House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into family, domestic and sexual violence* (Report, March 2021) [8.195] (Recommendation 81).

⁸³ Wendy Tuohy, *Family court chief justice calls for national database of intervention orders*, The Sydney Morning Herald (Online, 1 May 2024) <<https://www.smh.com.au/national/victoria/family-court-chief-justice-calls-for-national-database-of-intervention-orders-20240501-p5fo3a.html>>.

Recommendation 8

- **Opportunities should be explored to enhance the effectiveness of FVOs, including:**
 - encouraging the development of consistent police training in states and territories, aimed at operational and cultural improvement, with a focus on enhanced interaction with the family law system;
 - enhanced risk screening and case management processes in the FCFCOA;
 - greater judicial guidance in the FCFCOA, to clarify the practical effect of parenting orders where an FVO is in place, or is likely to be sought; and
 - the establishment of a national electronic database of FVOs, with sufficient ongoing funding to support its operation.

(b) Co-location arrangements

109. It is possible that enabling an application or enforcement of an FVO to be heard in the same physical location as the FCFCOA would minimise the risk, trauma and stress experienced by the victim-survivor navigating such process. However, physical co-location of state and federal judicial officers should not be prioritised as a solution. The state and territory courts should remain the primary avenue for seeking protection through FVOs.
110. The suburban Magistrates' Courts, or Local Courts, deal with a substantial number of FVO applications annually. For example, in the 2022–23 financial year, there were 41,465 initiating applications for family violence intervention orders in the Magistrates' Court of Victoria,⁸⁴ and 31,652 initiating applications for domestic and family violence protection orders in the Magistrates Court of Queensland.⁸⁵ The Local Court of New South Wales provides data from each calendar year, as opposed to each financial year: in 2023, there were 44,537 lodgements for apprehended domestic violence orders.⁸⁶
111. If these applications were to be made in Divisions 1 and 2 of the FCFCOA, we expect that an extraordinary volume of work would follow. While it is difficult to estimate the time, infrastructure and personnel required, having regard to the existing capacity of the FCFCOA, it is likely to be crippling.
112. In addition, to require parties to travel to the FCFCOA Registry (typically in the CBD) for the purpose of an FVO hearing would be unnecessarily burdensome. By way of illustration, of the 39,347 family violence intervention orders finalised in Victoria in the 2022–23 financial year, approximately nine per cent (3,489) were heard in the

⁸⁴ Magistrates' Court of Victoria, *Annual Report 2022-2023* (2023) <<https://mcv.vic.gov.au/sites/default/files/2023-11/MCV%20Annual%20Report%202022-2023.pdf>> 39.

⁸⁵ Magistrates Court of Queensland, *Annual Report 2022-2023* (2023) <<https://documents.parliament.qld.gov.au/tp/2024/5724T343-5A98.PDF>> 67-70.

⁸⁶ Local Court of New South Wales, *Annual Review 2023* (2024) <https://localcourt.nsw.gov.au/documents/annual-reviews/24-1745_DCJ_Local_Court_Annual_Report_2023_v06_digital.pdf> 11.

Magistrates' Court's principal registry in Melbourne, with the remainder heard in the other 13 registries across the state.⁸⁷

113. In addition, despite the complexities of the jurisdictional divide, we would not support the introduction of further measures enabling the FCFCOA to hear or enforce FVOs. This approach may risk further complicating the system overall, and may increase opportunities for systems abuse by differentiating the FVO pathway for victim-survivors in the family law system.
114. The FVO Bill, introduced in March 2021, sought to enable the FCFCOA to make new federal FVOs which, if breached, could be criminally enforced.⁸⁸ In our submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the FVO Bill, we commended the intent of the Bill, but raised concerns about the proposed regime, including:
- the likely increase in demand for the family courts under the proposed regime, and the need for potential resourcing, training, and infrastructure necessary to accommodate these pressures;
 - the potential for systems abuse, where parties may seek to increase the number, length, and cost of family law or family violence proceedings, through an additional FVO pathway;
 - querying whether the FVO Bill contemplates the making of interim orders, which are essential to ensuring timely protections for victims of violence;
 - the potential for additional costs for private litigants, Independent Children's Lawyers, and the legal assistance sector, as a result of the measures; and
 - the current limitations to effective communication and information sharing about FVOs between the FCFCOA and the state and territory courts.⁸⁹

While we support the prevention of, and strong responses to, family violence, we maintain the above concerns about the specific proposal in the FVO Bill.

115. The FVO Bill lapsed at the dissolution of the Parliament in April 2022. We do not support its reintroduction. Nonetheless, if the Australian Government intends to revisit the FVO Bill following this Inquiry, the above matters must be satisfactorily clarified and addressed, prior to the reintroduction of the FVO Bill or its successor.
116. The focus at the federal level should, instead, be on:
- the appropriate facilitation of information-sharing processes between the FCFCOA and state/territory courts; and;
 - more broadly, enhancing the resourcing and capacity of the legal assistance sector to support those who are affected by family violence.

⁸⁷ Magistrates' Court of Victoria, *Annual Report 2022-2023* (2023) <<https://mcv.vic.gov.au/sites/default/files/2023-11/MCV%20Annual%20Report%202022-2023.pdf>> 39.

⁸⁸ Explanatory Memorandum, Family Law Amendment (Federal Family Violence Orders) Bill 2021.

⁸⁹ See Law Council of Australia, *Family Law Amendment (Federal Family Violence Orders) Bill 2021* (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 25 June 2021) <<https://lawcouncil.au/resources/submissions/family-law-amendment-federal-family-violence-orders-bill-2021>>.

Recommendation 9

- **The lapsed FVO Bill should not be reintroduced into the Parliament unless the significant concerns raised by the Law Council in its June 2021 submission to the Senate Legal and Constitutional Affairs Legislation Committee are clarified and satisfactorily addressed.**

(c) Legal and non-legal support services

117. As discussed above in response to term of reference 2(c), there is a significant need for additional funding of services—especially legal services—to promote the early identification of, and response to, family violence in the FCFCOA and state/territory courts. We consider that current Commonwealth funding levels under the NLAP are approximately half of the level required to adequately meet demand on the sector.⁹⁰ This shortfall must be rectified as a priority.
118. For many Australians, the no-cost or minimal-cost services provided by government-funded legal assistance providers are often the first, and most fundamental, sources of support to address legal issues and prevent harm to individuals and families. Access to these services is especially important in the current economic circumstances.⁹¹ Family law matters account for 96 per cent of all Commonwealth-funded matters for LACs in Australia, and 86 per cent of these matters include a risk of family violence.⁹²
119. We note that the National Plan commits to capacity building for legal services, including Women's Legal Services and Aboriginal and Torres Strait Islander Women's Legal Services,⁹³ and we stress the importance of properly resourcing all legal assistance services that support victims of family violence.
120. While legal assistance services are not a 'cure-all', the benefit of investment in the legal assistance sector in minimising the multitude of costs to government associated with failure to sufficiently access justice has been consistently recognised in research in Australia and overseas.⁹⁴ Notably, the 2023 report, entitled *The benefits of providing access to justice*, commissioned by National Legal Aid, found that, for every \$1 invested in legal aid services by the Australian Government, an equivalent benefit of \$2.25 was delivered.⁹⁵
121. The current NLAP Agreement, ending on 30 June 2025, is not providing a model of sufficient funding to ensure that Australians are being provided with an adequate safety net in times of legal need, including when they are navigating a family law

⁹⁰ See Law Council of Australia, *Independent Review of the National Legal Assistance Partnership* (Submission to Dr Warren Mundy, Independent Reviewer, 27 October 2023) <<https://lawcouncil.au/resources/submissions/independent-review-of-the-national-legal-assistance-partnership>>.

⁹¹ Ibid.

⁹² Keely McDonough, *Family law matters take majority of Legal Aid funding in Australia, report finds*, Law Society Journal (Online, 29 March 2023) <<https://lsj.com.au/articles/family-law-matters-take-majority-of-legal-aid-funding-in-australia-report-finds/>>.

⁹³ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022-2032* (2022) <https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf> 62.

⁹⁴ See, e.g., Productivity Commission, *Access to Justice Arrangements* (Inquiry Report 72, 2014) <<https://www.pc.gov.au/inquiries/completed/access-justice/report>> 30-31; International Bar Association and World Bank Group, *A Tool for Justice: A Cost Benefit Analysis of Legal Aid* (Report, 2019) <<https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>> 19.

⁹⁵ Price Waterhouse Coopers, *The Benefits of Providing Access to Justice*, National Legal Aid (Report, January 2023) <<https://www.nationallegalaid.org/resources/benefits-providing-access-justice/>> 17.

matter and/or have experienced (or are risk of experiencing) family violence. This is especially the case in RRR areas.

122. In addition, the 2024–25 Federal Budget, released in May 2024, fell well short of what is required for the legal assistance sector to meet the growing demand it faces.⁹⁶
123. Under-resourcing of the legal assistance sector places pressure on those who are least empowered to act—and the consequences can be significant for the individuals affected, as well as the wider community.⁹⁷ We note with concern that a recent analysis, conducted by Women’s Legal Services Australia, showed that, over a five-day period in 2023, Women’s Legal Services were forced to turn away 1018 women who attempted to seek help.⁹⁸ These figures indicate that, each year, tens of thousands of Australians, including victim-survivors of family violence, are missing out on the legal help they need, due to a lack of resourcing and capacity within the legal assistance sector.
124. We understand that governmental negotiations are currently underway to inform the next NLAP Agreement, and that a standalone meeting of the Standing Council of Attorneys-General will be held in September 2024 to consider further legal assistance arrangements.⁹⁹
125. We commend Dr Mundy’s findings and recommendations in the NLAP Review Report to the Committee for its consideration and endorsement.¹⁰⁰ The Commonwealth, state and territory governments must urgently give effect to the key funding recommendations of the NLAP Review Report, including:
 - \$459 million per annum, shared by the Commonwealth (approximately 60 per cent), state and territory governments to increase funding for civil and family law matters;¹⁰¹
 - \$46 million in Commonwealth funding, and \$337 million in state/territory funding, to increase the rates paid to private practitioners undertaking legal aid work, to ensure that they are set at the same level as provided in the relevant court scales;¹⁰²
 - \$88 million in Commonwealth funding to ensure that Independent Childrens Lawyers, appointed by the family courts, are available across Australia and are properly supported to perform their vital role in representing the interests of children;¹⁰³ and

⁹⁶ See Law Council of Australia, *Court and tribunal funding welcome, but legal assistance services deserve more* (Media Release, 14 May 2024) <<https://lawcouncil.au/media/media-releases/court-and-tribunal-funding-welcome--but-legal-assistance-services-deserve-more>>.

⁹⁷ See, e.g., Joanna Woodburn, *Mother of domestic violence murder victim slams system designed to protect women and children*, ABC News (Online, 26 June 2024) <<https://www.abc.net.au/news/2024-06-26/mother-of-domestic-violence-victim-slams-system/104014062>>; Sarah Richards, *‘Unprecedented’ demand means Australia’s community legal centres are having to turn people away*, ABC News (Online, 8 February 2024) <<https://www.abc.net.au/news/2024-02-08/queensland-caxton-legal-service-domestic-violence/103438104>>.

⁹⁸ Women’s Legal Services Australia, *More than 52,000 women to be turned away from Women’s Legal Services due to funding crisis* (Media Release, 1 February 2024) <<https://www.wlsa.org.au/more-than-52000-women-to-be-turned-away-from-womens-legal-services-due-to-funding-crisis/>>.

⁹⁹ Attorney-General’s Department, *Standing Council of Attorneys-General Communiqué* (5 July 2024) <<https://www.ag.gov.au/sites/default/files/2024-07/scag-communique-5-july-2024.pdf>>.

¹⁰⁰ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>>.

¹⁰¹ Ibid 58 [Recommendation 5].

¹⁰² Ibid 139 [Recommendation 18].

¹⁰³ Ibid 141 [Recommendation 19].

- \$69 million in Commonwealth funding to increase pay parity between staff working in CLCs, ATSILS and FVPLS and those working in LACs.¹⁰⁴

126. Separately, noting that the recruitment, retention and succession of legal practitioners in RRR areas—especially in the legal assistance sector—is a significant challenge, we released a Position Paper in December 2023, entitled *HELP debt reduction and indexation relief for legal practitioners working in RRR locations*.¹⁰⁵ The Position Paper advocates for the establishment of a HELP debt relief scheme for lawyers who live and work in an eligible RRR area for at least two years, administered by the Commonwealth Department of Education.
127. By offering a tangible incentive to lawyers to relocate to an underserved RRR area, as has been already introduced for health practitioners and teachers, this scheme would facilitate improved access to justice for members of these communities—including victim-survivors of family violence—while not requiring significant Commonwealth expenditure.¹⁰⁶
128. We encourage the Committee to have regard to our Position Paper, noting that Recommendation 26 of the NLAP Review Report is broadly in line with our proposal.¹⁰⁷ However, we are receiving advice that it would be unfeasible to limit this relief to private lawyers in RRR areas who can demonstrate that over a five-year period, 45 per cent of their work was on grants of legal aid, as recommended in the NLAP Review Report. As noted above, the abysmally low rates of payment to the private profession mean that it has become increasingly unsustainable for them to take on this work, and a 45 per cent requirement is therefore unrealistic and unsustainable.

Recommendation 10

- **There must be a significant and ongoing increase in the funding of the entire legal assistance sector, and the Commonwealth, state and territory governments must urgently give effect to the key funding recommendations of the NLAP Review Report (Recommendations 5, 18, 19 and 25).**

Recommendation 11

- **A HELP debt relief scheme should be established for legal practitioners who reside and work in eligible RRR areas, to incentivise the recruitment and retention of qualified lawyers in underserved areas.**

Term of reference 4

129. Term of reference 4 requires the Committee to have regard to 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.

¹⁰⁴ Ibid 168 [Recommendation 25].

¹⁰⁵ Law Council of Australia, *HELP debt reduction and indexation relief for legal practitioners working in rural, regional and remote locations* (Position Paper, December 2023) <[https://lawcouncil.au/resources/policies-and-guidelines/position-paper---help-debt-relief-for-rrr-legal-practitioners->](https://lawcouncil.au/resources/policies-and-guidelines/position-paper---help-debt-relief-for-rrr-legal-practitioners-).

¹⁰⁶ Ibid.

¹⁰⁷ Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) <<https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>> 174-175 [Recommendation 26].

FCFCOA intervention in matters involving family violence

130. The Family Law Act makes some provision for FCFCOA intervention in matters involving family violence through sections 68B, 68C, 114, and 114AA. These sections enable the FCFCOA to grant injunctions that provide protection to parties, children and carers who are at risk of family violence—breach of which may result in arrest, and a short period of custody.
131. However, the FCFCOA's ability to make personal protection injunctions, pursuant to section 114 of the Family Law Act, may be diminished by the operation of section 114AB. While we appreciate that the intent of section 114AB is to prevent forum shopping, we have received feedback that it is now out of step with the contemporary needs of litigants. Given this, amendments to section 114AB of the Family Law Act should be explored to ensure that the FCFCOA is empowered to grant the necessary injunctions.
132. In addition, the ALRC Final Report noted submissions made about the reluctance of state and territory police to enforce these injunctions, on the basis that they are federal court orders.¹⁰⁸ As such, there may be opportunities for the Australian Government to work with state and territory governments to support the improvement of police operational procedures and training on the use of these federal powers. Participants in the family law system should have confidence that police will enforce personal protection injunctions made by the FCFCOA, as well as FVOs granted by the state or territory court.
133. We also understand that there are concerns about delays in the FCFCOA in hearing applications for personal protection injunctions, or for their enforcement. To address this, consideration could be given to establishing a separate court list dedicated to these applications, with the capacity to hold urgent hearings, where necessary. That would require additional resourcing for the FCFCOA.

Recommendation 12

- **To ensure that the FCFCOA is equipped to intervene in matters involving family violence by issuing an injunction, consideration should be given to:**
 - **amending section 114AB of the Family Law Act to ensure that the FCFCOA is empowered to grant injunctions in circumstances where this is necessary; and**
 - **establishing and resourcing a separate court list in the FCFCOA, dedicated to applications for injunctions, with the capacity to hold urgent hearings.**

¹⁰⁸ ALRC, *Family Law for the Future: An Inquiry into the Family Law System* (Report 135, March 2019) <<https://www.alrc.gov.au/publication/family-law-report/>> [4.30]–[4.31].