



# Improving the FVO process

Submission July 2024



## About EMH

Elizabeth Morgan House Aboriginal Women's Services Inc (EMH) is committed to protecting the right of self-determination of all Aboriginal Women and their children.

EMH provide culturally safe and responsive holistic specialist services, such as secure refuge accommodation, justice and family violence services. We walk beside our women at all stages of their life journey, recognising that violence and discrimination against our women comes in many forms and that they are more than the events that have happened to them. Our services are offered in Victoria but we provide intake and assessment services across the whole of Australia.

Our vision is to work together with Aboriginal communities to ensure safe and culturally strong futures for our women, children and young people.

## Our legacy

EMH honours the legacies of the Aunties whose footsteps we walk in. Aboriginal culture is about caring for and including everyone. Women are at the heart of that.

Having begun with the foresight of Elizabeth Morgan and a group of women from the powerful human rights movement that formed the Aborigine's Advancement League to establish a refuge for Aboriginal women, we continue to work on the frontlines of self-determination.

One of Aunty Liz's proudest achievements in her long list of accomplishments was the establishment of the EMH, first Indigenous Women's Refuge in Australia, named in her honour.

We uphold and defend of our women's and children's human right to be free from violence and discrimination. Our women are the heart of our community and respecting them as unique knowledge holders with the capacity to self-govern through culture, autonomy, decolonisation and self-determination is our Aunties vision.

EMH is the peak body for Aboriginal women and children in Victoria. Our 2022-2028 Strategic Plan reaffirms our position as a peak body and we are working to develop further sector training, events and advocacy within the limitations of our funding, whilst also delivering quality services.



### Impacts of the current FVO system: A case study

The current system fails to protect our women and hold perpetrators to account. Here's a case study of how the use of an FVO creates more trauma and burden on the family violence victims:

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\*Name changed

**The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.**

Family court proceedings are often an effective way to prolong coercive control. The UN Special Rapporteur on violence against women and girls made several recommendations regarding family court in September 2023, including:

- ensure mandatory training of the judiciary and other justice system professionals on gender bias, the dynamics of domestic abuse, the way in which litigation can be used as a strategy of abuse, and the relationship between allegations of domestic abuse and of so-called parental alienation and related pseudo-concepts.

Currently, we are finding that a male serial perpetrator can successfully submit a cross application against an affected family member (AFM) which then goes through the court system further traumatising the female AFM. This occurs even when the male has serious assault charges and full lengthy no contact orders against him.

This leads to misidentification of the perpetrator. Being misidentified as a perpetrator of family violence can have devastating effects on a woman – losing access to her children, losing her housing, her employment and engaging in years of legal battles. In Victoria, up to 58 per cent of women on Community Protection Orders have been misidentified as perpetrators. (Women's Legal Services Victoria, 2018).

Bias around an 'ideal victim' can particularly impact Aboriginal women. AFMs can yell back, fight back, use weapons and become 'emotional'. This type of 'resistive violence' in an abusive relationship is common. A recent analysis of police narratives of domestic violence incidents involving a female person of interest in New South Wales (Boxall et al., 2020) found that 48 percent of the 153 incidents they reviewed involved violent resistance. It also found that Aboriginal women were more likely than non-Indigenous women to use violent resistance (57% vs 40%).



When the AFM becomes the respondent, they must attend court in person as appearing remotely is no longer an option. Thus the male perpetrator continues to taunt his female victim and she can't get away from him even though the FV no contact order is in place. In these matters the FVIO usually goes to contest which involves quite a few court appearances. This is time consuming, traumatising and a continuation of family violence. The AFM's job or educational opportunities are put in jeopardy and they aren't given the space and time to recover from the violence.

**The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:**

1. 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
2. the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO
3. the availability of wrap-around support services and security for victims of violence.

Barriers to enforcing IVOs and Parenting Orders simultaneously exist within the complexity and singularity of cases. In the case study above, Kate was unable to make informed decisions regarding safety of her children, and her own wellbeing, as nobody could inform her of what the orders meant. EMH only were provided the information regarding details of the suspension via professional networks, and daily persistence, and advocacy. This was not provided to Kate, nor offered via the court. Should Kate not have sought services, and her case manager not had the time to advocate for her, it is unlikely she would have been able to find this information.

Placing the onus of comprehension on victims, without individual walk through support of their rights means that Respondents can attempt to convince AFMs of different terms, and exploit the gaps in the system, as seen by the Respondent above.

The extensive time it takes to go through the Family Court, and IVO processes can create the feeling of a perpetrator omnipresence for the AFM. This omnipresence often instils panopticon-like fear surrounding the woman's parenting, and his ability to navigate the courts.

**How FVOs could be more accessible for victims of violence going through the family law system, including but not limited to:**

1. making it easier to apply for and enforce an FVO
2. co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia



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

EMH agrees that changes need to be made to ensure an easier application process, but this must be done with a whole of system understanding of misidentification and systems abuse.

In our workers experience, some Magistrate Court workers were incredible at identifying systemic abuse, however this is not an across the board approach or experience. One of our workers was told by a Police Officer at the Court that in a misidentification case "sometimes we just have to tick a box and that is who the respondent is". The woman in this case now has an order against her, as she was just a ticked box. Any workers our women encounter in the court process can deal with things this way, and we find frequently do.

EMH believe there needs to be further understanding by the police and courts around why Aboriginal AFMs may not want to liaise with Police, and coordinating efforts with services like EMH may allow for increased access to the justice system for clients. For example, a service like ours could be involved in discussion between the AFM and police to advocate on their behalf, after not answering Police calls for weeks due to fear around the consequences of the interaction.

In not liaising with clients, AFMs are having IVOs placed on their behalf that they do not agree with. This again takes away their agency and creates further consequences for them. In one example, an EMH client who had extensive FV committed against her was allowed a Full Order Interim by the Court. When this returned to Court, Police stated that they attempted to call her, but she did not pick up, and that they were seeking a Condition 1 only. After hearing the event that prompted the IVO process, EMH felt a Condition 1 was not enough, and discussed such with the client. The client told us that she desired a Full Order for as long as possible, and she attempted to reach back out to Police, but did not have a central number. If EMH had not intervened, a woman who faced an almost lethal family violence event would not have a Full Order protecting her.

In the current existing binary system of Respondent and AFM, security for victims will likely fail to deter exploitation from Respondents in the form of systems abuse. The existing system does not allow for the enhancement of victim rights without taking these from women whose PUV will use systems against her.

Victims deserve power and control within the Court, but as we know violence is about power and control. By increasing power and control for one party within the Court (even when done with well intentions and in a deserved means for victim survivors), we are increasing the likelihood that these systems and reforms will be utilised maliciously by men who seek any and all avenues for harm.



Research demonstrates that being misidentified as a predominant aggressor on a family violence intervention order can have a significant impact on women's lives (we know that women are more likely to be teachers, day-care workers, etc, and potential criminal charges puts the woman's work life in jeopardy) and their access to safety, highlighting the need for improved policing and court responses to the issue beyond existing reforms.

(Reeves E (2021) 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. *International Journal for Crime, Justice and Social Democracy*. 10(4): 39-51. <https://doi.org/10.5204/ijcjsd.1992>)

### **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.**

Research into 20 anonymous FVIO applications found that there is no clear, transparent or easily accessible map of the process of applying for FVIO for either affected family members or Magistrates. (Agency and Resistance in Family Violence Intervention Order Narratives (Research Report) WEstjustice and Fitzroy Legal Service 28 February 2023)

As the report states, the process of analysing the narratives in FVIO applications highlights questions around how these are in fact crafted, and importantly, how they may be altered during the process.

"For instance, anecdotal evidence suggests that court registrars play a significant role in editing, rewriting and restructuring the narratives," the report states. "However, registrars are largely invisible in this process since there is no record of their contribution or changes to affected family members' narratives."

Our women need to have agency over the telling of their own stories.

Our women need to have clear and ease to access information. This could be a dedicated service that ensures AFMs are clear on the terms of FVOs once the distress of Court has settled (often lawyers are busy, or speed through this).

Our women need to feel that the court environment is safe. This could be achieved a number of ways, including with dedicated, independently funded court support workers, having different entry points so that AFMs are not exposed to Respondents while outside of, or entering the court. Once an order goes to contest, both AFM and respondent must attend court. In some cases we can argue that the AFM appears from the remote room but this isn't available in all courts. Having to argue for this is traumatising for the client.



Our women need feel that their circumstances are taken seriously. Family violence incidents are often pushed to the end of day, workers aren't taking the time to explain what this means and there is no follow up support.

### **Conclusions**

The lifelong impacts of an ineffective FVO system on women and children are enormous and further impact all social services.

The financial, social, physical and mental burden on women and children when navigating abuse should be concerning to all governments.

We know that women with a history of family violence have poorer financial outcomes over a lifetime and are at significant risk of physical and mental health complications. A significant proportion of women in prison have experienced family violence. Children are also victims in family violence cases, which has a lifelong impact on their development, understanding of healthy relationships and emotional regulation. We know from research that 96% of children aged 10-13years olds presenting for the first time at Children's Court were victims or survivors of family violence. (Dr [Susan Baidawi](#), Monash University, Jan 2024).

Any changes to the FVO system must look holistically at the burden placed on women and children and the long term implications of failing to provide agency in the process.

An abuser takes away your support network, your choices, your decision making ability and any hope that things will get better. The systems you turn to for support must not reinforce these outcomes.

