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Inquiry into Family Violence Orders

Attorney-General's Department Submission

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Introduction

The Attorney-General's Department (the department) welcomes the Standing Committee on Social Policy and Legal Affairs' (the Committee's) inquiry into how to provide better access for victim-survivors in the family law system to Family Violence Orders (FVOs) and the effective enforcement of those orders.

The department is progressing a number of initiatives which aim to make the family law system safer for victim-survivors of family, domestic and sexual violence (FDSV). This submission provides an overview of these initiatives, and provides additional information to support the Committee's consideration of issues arising under the Inquiry's terms of reference.

Current landscape – FVOs and the family law system

Under Australia's federal system of government, states and territories are responsible for the majority of laws related to family violence, including the making of FVOs, enforcement of breaches and associated criminal offences, such as an assault.

An FVO is a civil order made under a state or territory law to protect a person from family violence. A breach of an FVO is a criminal offence which can be prosecuted. Enforcement of FVO breaches are the responsibility of each state and territory's criminal justice system. Victim-survivors cannot enforce these orders directly, and must therefore rely on police and prosecutorial authorities to do so.

Individuals and/or police can apply for FVOs through courts in all states and territories, and there are broad similarities in process, including access to provisional, interim and final orders. However, jurisdictional differences exist, including the role of police and the basis under which police-initiated orders can be made. Other key discrepancies between jurisdictions' legislative regimes include who may issue an FVO, whether an application may be made online, notification requirements, service arrangements, the length of an issued FVO, and the maximum penalties that may be imposed if an FVO is breached.

Although FVOs are issued by separate states and territories, the National Domestic Violence Order Scheme (NDVOS) enables automatic mutual recognition, enforcement and registration of variations of FVOs across all Australian jurisdictions. The NDVOS is given effect by state and territory legislation and provides situational awareness for law enforcement and local courts when responding to FDSV. Under the NDVOS, information about FVOs is available to law enforcement and state and territory judicial officers, including across borders.

The Commonwealth is responsible for the federal family law system. While many families are able to resolve family separations without coming to court,¹ the matters that do proceed to the family law courts for resolution are increasingly complex, containing multiple risk factors.²

The Federal Circuit and Family Court of Australia (FCFCOA) and the state Family Court of Western Australia (FCWA) (collectively, the family law courts), are increasingly well-placed to proactively identify and manage these risks at all stages of family law proceedings. For the FCFCOA this includes through the introduction of the innovative family safety screening and specialised case management project known as the Lighthouse Project (discussed further below). However, the department acknowledges there continue to be challenges and barriers to the effective enforcement of FVOs and provision of effective supports for victim-survivors, particularly when navigating intersecting state and federal systems. These barriers are also touched upon in this submission.

Interaction between FVOs and parenting orders

State and territory FVOs, parenting orders and other orders made by the family law courts are complementary mechanisms that act together to protect children and their caregivers from harm and to ensure safer outcomes for victim-survivors.

When a family law parenting order is in place and an FVO is being made or varied, the relevant state or territory court may change an existing parenting order that has been made under the *Family Law Act 1975* (Cth). In exercising this power, state and territory courts must have regard to a number of considerations, including whether spending time with both parents is in the best interests of the child concerned, and that it is appropriate to change an existing parenting order because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order. This is to ensure that state, territory and Commonwealth courts can keep children and their caregivers safe. This can include orders for supervised contact, including through Children's Contact Services.

When there is an FVO in place and a parenting order is being sought, family law courts must consider any incidence of family violence, or prior and existing FVOs concerning the child or a member of the child's family, when making parenting orders. When considering what order to make in parenting proceedings the court must, to the extent that it is possible to do so, ensure that any parenting order it makes is consistent with existing FVOs and does not expose a person to an unacceptable risk of family violence.³ The parenting order may include any measures that the court considers necessary to ensure the safety of those affected by the order.

However, the family law courts may also make a parenting order or injunction that is inconsistent with an FVO. If the court makes an order inconsistent with a current FVO, the court must be specific about this inconsistency in its orders and explain how the contact arrangements will take place. The

¹ Approximately 3% of separated parents use courts as their main pathway to making parenting arrangements. 16% are assisted by family dispute resolution services or lawyers (Australian Institute of Family Studies, [Parenting arrangements after separation](#), 2019).

² *Federal Circuit and Family Court of Australia: Annual Reports 2022-23*, [FCFCOA Annual Report 2022-23](#), p 14.

³ *Family Law Act 1975* (Cth) (Family Law Act), s 60CG.

court must also notify all persons affected by the family violence orders. In these circumstances, the FVO is invalid to the extent of the inconsistency with the parenting order.⁴

Escalation of risks following separation and during family law matters

FDSV often does not end when a relationship ends, and there is heightened risk that perpetrators will increase or escalate abusive behaviours against victim-survivors during and after relationship breakdown.⁵ 83% of initiating applications for parenting or parenting and property related orders filed in the FCFCOA in 2022-23 contained allegations of family violence by one or both parties. Over the same period, 78% of matters were mandatorily referred to child welfare agencies due to allegations of child abuse and/or family violence.⁶

Matters proceeding to the family law courts are also characterised by the presence of intersecting risk factors. These include allegations of child abuse, family violence, mental health issues or drug, alcohol or substance misuse, child abduction, and threats to harm. 86% of parenting or parenting and property related matters in the FCFCOA in 2023-23 involved allegations of more than one risk factor, with 69% of matters containing allegations of 4 or more risks.⁷

This data may not fully capture prevalence of risk that the court should be aware of in family law matters, as it relies on parties self-disclosing through a 'notice of risk' provided with an initiating application. This is separate to the risk assessment and triage that occurs under the Lighthouse Project (discussed further below). Legislative frameworks and definitions differ between jurisdictions, and parties may complete the notice of risk based on a narrower understanding of family violence than that captured by section 4AB of the Family Law Act. This presents a challenge when individuals are simultaneously navigating both family law and state-based systems, with the complexities of these systems increasing stress and anxiety and potentially risking re-traumatisation for victim-survivors. These difficulties can be exacerbated for self-represented litigants.

Identification and management of family violence risks and impacts in family law matters

The department notes the Inquiry's terms of reference, while focussed on access and enforcement of FVOs for victim-survivors in the family law system, is also broadly concerned with the safety of

⁴ Family Law Act, ss 68P, 68Q.

⁵ Research has demonstrated the heightened risks that follow separation and the critical role of family law proceedings and FVOs in identifying and responding to these risks. For example: J. Dwyer and R. Miller for the Victorian Government Department of Human Services (2014) [Working with families where an adult is violent: best interests case practice model: specialist practice resource](#), p 96; McCulloch, J., Maher, J., Fitz-Gibbon, K., Segrave, M., Roffee, J. for the Department of Health and Human Services (2016) *Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF)*; and Australian National Research Organisation for Women's Safety (2018) [National Risk Assessment Principles for Domestic and Family Violence](#) and *Companion resource: A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence*.

⁶ *Federal Circuit and Family Court of Australia: Annual Reports 2022-23*, [FCFCOA Annual Report 2022-23](#), p 13.

⁷ *Federal Circuit and Family Court of Australia: Annual Reports 2022-23*, [FCFCOA Annual Report 2022-23](#), p 14.

victims of violence in the family law system. The Australian Government has committed to a range of measures to improve the protections and support available to those affected by FDSV and to ensure the federal family law system is safe, accessible and results in fair outcomes, which are outlined below.

Policy and legislative reform

Parliamentary inquiries, family law experts and women's and children's safety advocates have raised concerns that provisions in the Family Law Act have resulted in unsafe parenting arrangements for children, and in some cases, exacerbated situations of conflict and control and family violence for women. The *Family Law Amendment Act 2023* (Cth) (the Amendment Act), which commenced on 6 May 2024, responded to these concerns by introducing measures which emphasise the protection of children and victims of family violence through a clearer and simpler parenting framework and repealing the widely misunderstood presumption of equal shared parental responsibility.

The changes in the Amendment Act simplified the legal framework for making parenting orders and now requires courts to specifically consider any history of family violence when determining what is in the best interests of the child, instead of only being required to consider current FVOs.⁸ Other changes include complementing the provisions that empower courts to make vexatious proceedings orders by enabling courts to make 'harmful proceedings orders'. Harmful proceedings orders restrict the filing and serving of new applications without obtaining prior leave of the court where there has been repeated filing of unmeritorious applications to harass or intimidate another party. These changes recognise that repeated and unmeritorious family law litigation can cause significant stress, trauma and harm to respondents and children involved. This form of systems abuse can be used as a mechanism for perpetrators of FDSV to continue to exert control and instil fear in a victim-survivor. The legislation also made the consequences of non-compliance with parenting orders clearer and easier to understand and apply, while ensuring that concerns around safety and family violence risks continue to be considered appropriately when determining whether a person has contravened a parenting order.⁹

A second tranche of reforms is currently under consideration, focusing on simplifying the property settlement framework and implementing further safeguards to make the family law system safer for separating families. As the Australian Law Reform Commission identified in its landmark 2019 inquiry into Australia's family law system,¹⁰ family violence victims struggle to achieve a fair division of property after separation and may suffer long term economic disadvantage following relationship breakdown. The proposed reforms would make the economic effects of family violence relevant at both the contributions and current and future circumstances steps in the property decision-making

⁸ Family Law Act, s60CC(2A)

⁹ These amendments respond to findings of the 2022 AIFS and ANROWS publication '[Compliance with and enforcement of family law parenting orders: Final Report](#)' which found that non-compliance with parenting orders arises from a complex range of dynamics, including safety and family violence risks.

¹⁰ Australian Law Reform Commission, [Family Law for the Future: An Inquiry into the Family Law System](#) (2019) (ALRC Report 135).

framework. This will ensure the financial impacts of family violence can be appropriately considered in cases where it is relevant, and better support just and equitable property settlement outcomes.

Given the potential for systems abuse, other legislative reforms being considered include proposed amendments to the Family Law Act to introduce safeguards around the disclosure of 'protected confidences' (such as medical and counselling records) in family law proceedings where there is no probative value for the disclosure and it would be harmful to the respondent and/or their children.

Information sharing between family law courts and state and territory agencies

The Australian Government has been leading on initiatives to improve information sharing between the federal family law system, and state and territory child protection and family violence systems. This work includes the co-location of policing and child protection officials in family law registries across the country, and implementation of the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (the National Framework).

The *Family Law Amendment (Information Sharing) Act 2023* (the Information Sharing Act) commenced on 6 May 2024 and operationalised key aspects of the National Framework, enabling the family law courts to access timely information relating to family violence, child abuse and neglect risk from state and territory agencies at any time during parenting or parenting and property proceedings.

The Information Sharing Act broadened the scope of risk information that can be shared between the family law courts and state and territory policing, firearms and child protection agencies to enhance the family law courts' ability to consider disparate information in a holistic way to better identify FDSV risks. The family law courts are able to issue two types of information sharing orders that require police, child protection and firearms agencies to provide particulars, documents or information in their possession and control relating to family violence, abuse and neglect, such as active or historical FVOs.

The Information Sharing Act is further supported by the co-location of 22 child protection and policing officials in or near family law court registries across Australia (the Co-location Program). The Information Sharing Act and the Co-location Program allow for critical safety information to be received from agencies in order to assist family law judicial officers to make informed and timely decisions during proceedings. Funding for the National Framework and the Co-location Program is non-ongoing and due to terminate on 30 June 2025.

Forced marriage

The department is also currently working with state and territory governments, civil society organisations and people with lived experience of forced marriage to develop options to enhance civil protections and remedies for those in and at risk of forced marriage. Forced marriage disproportionately affects women and children, and is criminalised as a slavery-like practice in Australia as well as being recognised as a form of FDSV.

The department will conduct public consultations on draft options for a model to enhance civil protections and remedies for forced marriage across July – September 2024, seeking views on opportunities to enhance protections and support for people in or at risk of forced marriage, including by building on existing frameworks such as family and domestic violence frameworks and information sharing frameworks such as the NDVOS. Public submissions to and any recommendations from this Inquiry will also be considered by the department where relevant.

Legal and non-legal support services available in the family law system

The Australian Government also supports several initiatives that provide legal and non-legal supports to parties before the family law courts who are, or have been, impacted by FDSV. These include the Lighthouse Project (Lighthouse), the provision of Indigenous Family Liaison Officers to provide culturally responsive support for First Nations litigants, information sharing and co-location initiatives. Other services are also available for families who seek to resolve arrangements for children following relationship breakdown without going to court. The department oversees funding arrangements for key legal and non-legal support services for children and families through the *National Legal Assistance Partnership 2020-25* (NLAP) and the *Family Relationships Services Program* (FRSP) (see more information below).

Lighthouse

The FCFCOA's Lighthouse is an innovative approach taken by the courts to screen for and manage risk, with a primary focus on improving outcomes for families involved in the family law system. Lighthouse was developed in response to increasing concerns about family violence, and calls from numerous stakeholders for comprehensive risk screening and specialised management of high-risk cases. It supports early identification and response to family violence risk, with a focus on identifying risk factors and providing case management pathways that are triaged based on the level of risk. Lighthouse is currently active in all 15 primary family law court registries.

Lighthouse includes an online risk screening questionnaire that is completed by parties filing or responding to applications for parenting and parenting and property orders. Upon completion, parties are provided information about safety planning and support services available, assessed by a family counsellor and provided with tailored safety planning and referrals if assessed as being high risk. Matters triaged as high risk are also placed on the Evatt List.

While participation in Lighthouse risk screening is voluntary, data shows a high level of uptake, with 73% of those contacted for inclusion having at least one party completing the risk screen and of those, 59% screened as high risk.¹¹

Evatt, Magellan and Special Indigenous Lists

The Evatt and Magellan Lists are specialist court lists operated by the FCFCOA. The Evatt List, which supports Lighthouse, is a specialist list where a highly qualified team of Senior Judicial Registrars, Judicial Registrars, Court Child Experts and court staff, in consultation with Judges, are allocated to

¹¹ *Federal Circuit and Family Court of Australia: Annual Reports 2022-23*, [FCFCOA Annual Report 2022-23](#), p 16.

manage more intensive case management and resources. The Evatt List has been created to ensure that families who are the most vulnerable are provided with resources and support in a timely manner. It is a case management pathway that responds to the particular needs of the family as efficiently and effectively as possible to minimise the risk of further trauma and harm.

The Magellan List is a case management pathway for matters involving recent disclosures or allegations of sexual abuse and/or serious physical abuse of a child, in circumstances where the Court is required to intervene to protect the child. The Magellan List is designed to ensure that these cases are dealt with as effectively and efficiently as possible by providing a tightly managed approach with a multi-disciplinary team of Judges, Registrars and Court Child Experts who manage cases from start to finish.

Special Indigenous Lists aim to address the barriers that can hinder Aboriginal and Torres Strait Islander people from filing initiating applications and attending court by providing culturally responsive alternatives developed in collaboration with local communities and First Nations support services. These lists are supported by Indigenous Family Liaison Officers (IFLOs) within the FCFCOA. IFLOs are critical in connecting and engaging the FCFCOA with community and facilitating full participation in court proceedings. Through enabling active engagement of parties in proceedings, this assists with reducing the cost and timeframes for matters.

Priority Property Pool program

Achieving a quicker and more cost-effective property settlement is key to recovering from the financial impact of separation. The Priority Property Pool program provides separated couples with a small value property pool with a simplified way of resolving property disputes to help minimise risk and legal costs and best preserve the parties' assets. Case management involves a registrar-led phase, where a Registrar can assist separating couples to reach agreement, and a judge-led phase where simpler processes are applied at a final hearing before a judge. This case management approach is particularly beneficial for those matters involving FDSV, by assisting parties to achieve quick, safe, fair and affordable property settlements and support longer-term financial wellbeing. The program was expanded nationally to all filing registries in October 2023.

Ban on personal cross-examination

To protect victim-survivors of family violence, the Australian Government provides funding for the Cross-Examination of Parties Scheme established by the *Family Law Amendment (Family Violence and Cross-Examination of Parties) Act 2018*, which prohibits direct cross-examination by self-represented litigants during family law proceedings where there are allegations of family violence. In these circumstances, the Scheme requires that cross-examination be conducted by a legal representative and ensures that all eligible parties can access legal representation from legal aid commissions when the ban is applied.

Legal assistance funding

Timely access to legal assistance is critical for separating families at risk of FDSV, noting the potential for FDSV escalation at the point of relationship breakdown and separation. Under the NLAP, the

Government is providing more than \$2.4 billion over 5 years for legal assistance services across Australia, including legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services.

People experiencing or at risk of FDSV and children are priority client groups under the NLAP. This funding supports women and children to achieve outcomes related to safety such as help with tenancy, debt, family violence orders, and family law matters. NLAP funding includes funding for Independent Children's Lawyers (ICLs) that are appointed upon an order of the court to represent the best interests of the child in family law proceedings. ICLs are often appointed in matters where there are allegations of FDSV or other forms of maltreatment or risks to the child.

Wrap-around support services

Family Advocacy and Support Services (FASS) are funded by the Australian Government under the NLAP and provide integrated duty lawyer and family violence support services to help families affected by family violence with matters before the family law courts. For example, FASS assist with preparing applications and notices of risk; developing safety plans; and assisting parties to manage matters across the family law, state/territory domestic violence and child protection systems. Services are operational across all states and territories in all permanent court registries and circuit locations. Both men and women, whether they are a victim-survivor or an alleged perpetrator, are eligible for FASS.

FASS are trauma-informed and offer high-quality social support services so that clients' other issues, particularly where they elevate the risk of family violence, are identified and responded to alongside legal issues. FASS ensure that appropriate social support referrals are made for clients' non-legal matters, and where feasible, FASS partners with established providers of specialist domestic violence services and specialist mental health services to deliver the services.

Through the NLAP, the Australian Government also funds 17 community legal service providers to deliver specialist domestic violence units (DVUs) and health justice partnerships (HJPs) in 21 locations around the country, plus 1 online model in Victoria. Specialist DVUs provide free frontline legal assistance and other holistic support. The units provide legal advice and assist clients to access services such as financial counselling, tenancy assistance, trauma counselling, emergency accommodation, and employment services. HJPs integrate legal assistance with health services to ensure victim-survivors can access legal assistance in a safe location. HJP lawyers also train health professionals to recognise when patients have legal problems related to domestic violence, and to help facilitate safe access to specialist legal assistance.

Other services available outside of family law courts

There are a range of other services available to support separated and separating families to resolve their post-separation issues without going to court, including the breadth of programs funded under the FRSP. The Government currently provides over \$250 million per annum for these important services, including Family Relationship Centres, the Family Relationship Advice Line, Family Dispute Resolution, Family Counselling, Children's Contact Services, the Parenting Orders Program/Post

Separation Cooperative Parenting Program, and Supporting Children After Separation program. Many clients and families that use these services have likely been exposed to some form of FDSV risk either during their relationship, or continuing after the end of the relationship. The assistance of these services may be sought at any stage, including prior to separation, after separation, and before, during or after court proceedings and court orders.

While FRSP providers draw on significant experience in supporting separating families, they are encouraged to maintain strong referral networks to other, more specialised services that are able to provide more intensive support in relation to FDSV, where this is required. Common referrals include to specialist men's behaviour change programs, longer term counselling support, legal support, financial counselling and other crisis services.

Legal assistance also has an important role to play to navigate families away from court while ensuring safe and equitable outcomes. For example, the lawyer-assisted family law property mediation program provides legal advice, advocacy and mediation services to help separating couples with small property pools to reach agreement on their property split.

Improvements to physical security at the family law courts

The family law courts are each responsible for their own operations and management, including ensuring the safety of all court users and maintaining the security of federal court facilities.

The FCFCOA delivers its services through a variety of accommodation arrangements, including through utilising the Commonwealth Law Courts buildings administered by the Department of Finance (located in capital cities), utilising leased premises in areas with larger populations where a permanent presence is required, and through accessing approximately 27 different state facilities for circuiting in locations where there is no permanent FCFCOA presence.

The Government has recently invested \$4.95 million to open a new FCFCOA registry in Launceston, Tasmania, with enhanced security features in order to ensure that families are kept safe when they access the justice system, and to improve the overall experience for all court users.¹² The new FCFCOA Launceston registry features two court rooms and Judges' chambers, as well as a range of design features to enhance security and safety for children and families. This includes a dedicated safe room for vulnerable litigants and their children located within a secure corridor that includes a safe access bathroom, and a separate but adjoining video-conferencing safe room for vulnerable litigants, to enable attendance at court events remotely whilst remaining within the safety of the court precinct. There is also a large child-minding room within the safe corridor for Court Child Experts to be able to undertake interviews with children in a safe environment.

¹² Further information can be found on the FCFCOA's website: [FCFCOA Press Release of 3 April 2023](#).

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

Stakeholder concerns about FVOs commonly focus on issues of enforcement, including criticism of police and justice system responses to breaches of FVOs. This is particularly for breaches of FVOs that may be considered to be ‘minor’, such as abusive behaviours that do not involve a physical incident but constitute a broader pattern of coercive control (eg technology-facilitated abuse). The issue of access to FVOs has primarily been raised in the context of misidentification of the victim-survivor as a primary aggressor, or in cases of perpetrators of FDSV misusing systems to continue to exercise coercive control by seeking an FVO against their partner. The department is also aware of difficulties and complexities that may be encountered by victim-survivors when navigating both the federal family law system and state and territory systems when seeking or enforcing an FVO.

Intersections between state and territory and federal systems

Difficulty in attending multiple courts

The family law courts cannot issue state and territory FVOs, meaning that victim-survivors must commence proceedings separately in a state or territory court to obtain or vary an FVO.¹³ This can be burdensome for parties to navigate multiple courts to address their legal needs, and can place a party at risk when urgent protection is needed. Requirements to attend multiple courts and to recount stories of abuse in multiple forums may also contribute to re-traumatisation. Some litigants may also be unwilling to apply for FVOs out of fear of reprisal or the continuation of coercive and controlling behaviours through the court process.

Current limitations to physical co-location of courts

State courts are generally not permanently co-located with federal courts, with the exception of the FCWA being co-located in the Peter Durack Commonwealth Law Courts building in Perth, and the NSW Supreme Court being co-located in the joint Commonwealth/New South Wales-owned Queens Square Law Courts building in Sydney. It is far more common for the FCFCOA to share state court facilities on a temporary basis, for example when on circuit for family law matters.

The department notes any proposal to physically co-locate state court and federal court facilities would be a matter for the Commonwealth and the respective state or territory government, and would need to be closely considered to ensure facilities meet the needs of court users along with the operational needs of the respective courts. Any co-location would require consideration of how the necessary security, support services, administrative staff, systems and resources would be configured to enable co-location.

¹³ While state and territory courts are vested with federal civil jurisdiction, the High Court has held that insofar as the cross-vesting legislation (the *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth)) purported to vest State judicial power in the Federal and Family Courts, the scheme was constitutionally invalid (*Re Wakim: Ex parte McNally & Anor* [1999] HCA 27 (‘Re Wakim’)).

Obtaining and enforcing personal protection injunctions under the Family Law Act

While family law courts cannot currently issue FVOs, personal protection injunctions (PPIs) are available under the Family Law Act. These orders may be useful to persons who are already before a family court and do not have an existing FVO or need more tailored or nuanced protections than would be appropriate to provide in an FVO. The family law courts have broad discretion to make any PPI it considers is 'appropriate for the welfare of the child' or 'proper with respect to the matter to which the proceedings relate'.

However, PPIs have certain limitations. Sections 68C and 114AA of the Family Law Act provide an automatic power of arrest where a person breaches an injunction for personal protection, but access to this remedy is rare and not well understood, including by police. Unlike breaches of state FVOs which constitute a criminal offence and trigger a police or criminal justice response, the breach of a PPI must ordinarily be followed up by the protected person bringing a private action against the offender in a family law court at their own expense.

Previous law reform efforts to criminalise breaches of PPIs and introduce federal FVOs

Past governments have considered different approaches to addressing the challenges faced by people who are before the family law court and seeking protection from family violence. Ultimately, these did not progress due to stakeholder concerns and significant implementation challenges.

In 2017, the then Government proposed measures to criminalise breaches of existing family law PPIs in the Family Law Amendment (Family Violence and Other Measures) Bill 2017, following recommendations in 2010 by the Australian and New South Wales Law Reform Commissions,¹⁴ and in 2016 by the Victorian Royal Commission into Family Violence.¹⁵ The measures would have made it a Commonwealth criminal offence to breach a family law PPI, regardless of the purpose for which the injunction was issued or its terms. The measures would not have altered the statutory test on which PPIs are issued, or the form in which they are made. The personal protection injunction provisions were removed from the 2017 Bill prior to its passage in August 2018 in response to stakeholder concerns and unresolved complexities involving the practical enforcement of the orders.

Practical issues were raised around police enforcing PPIs. This included concerns that the family law courts' broad discretion to impose conditions could see orders with conditions that police would not be able to enforce in practice or that prohibit behaviour that does not warrant police intervention, for example rudeness or denigration. Further, as PPIs are embedded within broader family law court orders, this gave rise to concerns police would need to undertake time-consuming reviews of the orders to determine whether a condition warranting arrest has been breached. This would be highly undesirable in situations where an urgent police response is required. In the absence of certainty

¹⁴ Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response* (2010) (ALRC Report 114, NSWLRC Report 128), Recommendation 17-4.

¹⁵ Victorian Royal Commission into Family Violence, Recommendation 131.

about the existence, enforceability and terms of a PPI, there was concern that police would not be able to take action to enforce a breach without a high risk of unlawful arrest.

As an alternative, in 2021, the then Government introduced a Bill to create a criminally enforceable federal family violence order scheme. The Family Law Amendment (Federal Family Violence Order) Bill 2021 (the FFVO Bill) sought to allow the family law courts to make federal family violence orders on a final order basis, where there is no state or territory FVO in place. While state and territory courts were to remain the primary forum for FVOs, the FFVO Bill was intended to reduce the need for applicants to attend federal and state courts on multiple occasions, be issuable on conditions that are practically enforceable, and be made in a standard form template that can be registered and shared on police systems. The Bill was considered by the Legal and Constitutional Affairs Legislation Committee, which handed down its report in July 2021 and contained dissenting recommendations highlighting feasibility and implementation challenges relating to resourcing and potential systems abuse and noting that the Bill should include provision for an interim order framework. The Bill ultimately did not proceed and lapsed with the prorogation of the 46th Parliament.

Areas for improvement

While a breach of an FVO is a criminal offence which can be prosecuted, enforcement of FVOs are the responsibility of each state and territory's law enforcement and prosecutorial authorities. There are significant variances between FVO frameworks across jurisdictions, such as inconsistent definitions of FDSV and different penalties for breaches.

The department is conducting a national review of domestic violence order frameworks, which will consider opportunities for greater consistency across jurisdictions. The review will identify potential reform options, including in relation to the scope of the NDVOS.

Ensuring FVOs are effectively enforced requires not only streamlined processes but also a robust understanding by police and the justice system of the nature and impact of FDSV, which is continuously evolving. Addressing cultural barriers and biases is essential for enhancing responses to FDSV and improving outcomes for victim-survivors. For example, there has been growing awareness in recent years around coercive control, which is almost always an underpinning dynamic of family and domestic violence. Coercive control involves patterns of abuse over time, and can include physical or non-physical abusive behaviours. Coercive control can be difficult for police and first responders to recognise, as they typically provide incident-based responses. The Australian and state and territory governments have released National Principles to Address Coercive Control in Family and Domestic Violence, to create a shared understanding of coercive control and its impacts. Improved understanding of coercive control, including by police and justice systems, will lead to better outcomes for victim-survivors.

Systemic issues, including those impacting police culture, can also hinder effective responses to FDSV, such as information sharing gaps, inconsistent or narrow definitions of violence, risks of misidentification of victim-survivors as primary aggressors and inadequate workforce capabilities.¹⁶

The Australian Government is committed to improving police and justice system responses to better support victim-survivors and hold perpetrators to account.

In the 2022-23 Budget, the Government provided funding for the department to develop and deliver a national training and education package to enhance the effectiveness of police responses to FDSV. The package will build on training that exists in the states and territories, seeking to enhance law enforcement’s response through increasing awareness of coercive control, and improving recognition of indicators to identify the more subtle behaviours of FDSV, including through the use of technology facilitated abuse. The training will also include content with respect to culturally safe policing responses, and trauma informed models of response to minimise re-traumatisation.

Other relevant inquiries into the family law system

The department has compiled below a list of previous inquiries into the family law system that are relevant to this Inquiry’s terms of reference and may assist the Committee. Noting recent family law reforms and policy changes on foot, the implementation status of recommendations of these inquiries is ongoing and may not be reflected in the Government response which is a point-in-time response by the Government of the day. Additional information on specific recommendations can be provided to the Committee upon request.

Inquiry	Government response
Standing Committee on Social Policy and Legal Affairs, <i><u>‘Parliamentary inquiry into a better family law system to support and protect those affected by family violence’</u></i> , concluded December 2017	Government response (19 September 2018)
Australian Law Reform Commission, <i><u>‘Family Law for the Future: An Inquiry into the Family Law System’</u></i> (ALRC Report 135), March 2019	Government response (March 2021)
Standing Committee on Social Policy and Legal Affairs, <i><u>‘Inquiry into family, domestic and sexual violence’</u></i> , concluded 1 April 2021.	Government response (30 March 2023)
<i><u>Joint Select Committee on Australia’s Family Law System</u></i> , concluded 22 November 2021	Government response (25 January 2023)

¹⁶ Cullen, P., Walker, N., Koleth, M., & Coates, D. (2022) *Voices from the frontline: Qualitative perspectives of the workforce on transforming responses to domestic, family and sexual violence* (Research report, 21/2022), Australia’s National Research Organisation for Women’s Safety.

Standing Committee on Social Policy and Legal Affairs, ' <u><i>Inquiry into family violence orders</i></u> '	N/A
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