

16 July 2024

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Standing Committee,

RE: inquiry and report on how to provide better access for victim-survivors in the family law system to Family Violence Orders (FVO) and the effective enforcement of those orders.

I would like to take this opportunity to raise an awareness of the 'public' v 'private' two-tier system of Family Violence Orders and hope the Committee will undertake further inquiries on these issues as well as, perhaps commit to widening the inquiry to include or, seeking to have a further inquiry on Domestic Violence Orders and not just being limited to Family Violence and those who are in the Family Law System. Much domestic violence occurs in situation where there are no children or children are over the age of 18 and where there is no cases before or involving the Family Court System.

Currently, victims of family or domestic violence can have a FVO/DVO taken out on their behalf by Police. However, there is also a private system that can assist victims to take out their own FV/DV application, for several reasons, including that Police have dismissed the necessity for an application for one for a real victim. Thereby forcing an already vulnerable and frightened victim to engage in the private system, which is not only extremely costly to the victim, but also places the victim in a more precarious situation or the Application for an order not being taken as serious by the abuser/perpetrator.

The private system is promoted to victims as being 'easy' and 'free' when in fact it is anything but easy and free. Victims are led to believe that it is as simple as downloading forms off the Magistrate Court (of their State) website or collecting forms from the Magistrate Court directly – completing and filing in Court.

I have been in a police station where I have overheard a Police Officer tell a victim to take out her own DVO privately.

I have been in victim support group counselling sessions where victims have reported that they too were told to take out their own DVO/FVO applications. The police officer on the day makes the decision and not all police believe all victims. They were left feeling unworthy/ invalidated/ in more fear and many gave up when they realised how private FVO/DVO applications and process works.

Many gave up when they realised:

- (a) The victim has to stand up and see their abuser in court and without having engaged a lawyer, have to 'fight for their life' on their own against the abuser; or the abuser may have engaged the services of a lawyer, so they are placed in an even more vulnerable situation of 'fighting for their life' against a person who has more expertise in the process and the confidence to stand up in Court but has no real understanding or knowledge of what the victim has experienced.
- (b) Further, an abuser can take out a cross-application against them; and
- (c) That if the abuser does take out a cross application and it is upheld, that the matter more than likely will proceed to a very expensive trial with which they do need the services of a lawyer and the whole process can take up to several months to be finalised.
- (d) To save costs and the experience of a court case which is quite frightening and intimidating for an already vulnerable victim and one who may also be trying to protect and feed, clothe and house children, the victim may feel pressured into accepting an undertaking from the victim (which is worthless) but walk away with a false sense of safety.
- (e) The Court -appointed lawyer is inundated with many cases on any given day and does not have the capacity to give most, if not all, private applications the expertise advice that each individual victim requires for their own matter.
- (f) Legal Aid does not cover for the costs of a private lawyer for ALL people. It is means-tested and just because a victim earns above the cut-off amount, it does not mean the victim has the financial capacity to engage the services of a lawyer. The average hourly rate of a lawyer is \$450 and a person is required to pay for each hour the lawyer is at court. Some lawyers do offer a flat rate, but the average flat rate can range from \$650 to thousands for one attendance.

The safety of a victim should not be at the cost of choosing to feed, clothe and house a child/children or self and for those victims who are fortunate to have their incident/situation taken on by Police, the court and process cost is rightfully, free.

Do not for one minute ignorantly believe that if an FVO/DVO matter is not taken on by police than it must not be serious or require an FVO/DVO, as I have stated above, Police decide, and sometimes it is just one Officer and that is where conscious and unconscious bias of that Officer plays a crucial role. I know this from personal experience and from being in victim support groups. Many officers are still failing victims either by sheer ignorance; their own misogynist/ misandrist views; laziness or lack of care, concern or interest; or lack of understanding and knowledge of family and domestic violence.

But one of the scariest aspects of this private system is it allows an abuser/perpetrator to misuse the 'private' system to further control and abuse a victim.

The reason this occurs is because the initial process is free and as simplistic as filling out an application form and writing whatever one wants to, without the need for any evidence or a lawyer. A person can simply download the forms off the Court website, state whatever they

want and with no need to include any evidence to support their claims. Whilst I understand that the need for no evidence was to expediate the process for victims genuinely in need of protection, it allows for the system to be abused and enable ongoing abuse to many genuine victims.

Once the 'fake' Application is lodged in Court the genuine victim is not only at the mercy of their abuser, but then is the mercy of the Court system and subjected to all the considerations I have outlined in a-f above.

Again, do not ignorantly think if a person was being abused, they would/should have already had an Order.

The situation and processes are not a 'one size fits all' for FVO/DVOs.

Further complicating both the public and private systems are situations where a party to proceedings moves/lives interstate. Some issues I have identified include, but not limited to:

- which State laws apply, and which State will act on an application or breaches? Currently, for incidents of assault, the incident MUST be reported in the State in which it occurred. Therefore, a victim has to travel back to the State in which an incident occurred to document a matter to Police as well as well as in many cases take out the private FVO/DVO because of the difference in Legislation and what is deemed to be FVO/DVO in each State.
- For incidents of coercive control or internet coercive control situations, no one seems to be able to answer what State the matter has to be reported in: the State where the victim lives; or the State where the perpetrator lives. This is not clear cut.
- What State will an abuser who breaches a DVO be remanded/held in – the State of the victim or the State of the abuser. Because, not all States have coercive control laws in place now and therefore, not all Magistrates are knowledgeable in each State's laws as well as, an abuser can claim (as a defence) that they were not aware that xyz action constituted a crime or breach as in their State, there had been no education.
- Genuine victims are forced to, at their own expense, travel interstate, to defend fake applications thereby also putting themselves in more danger and more expense to travel. If they cannot travel to defend themselves, and are unable to engage a lawyer, they are left with no alternative but to accept a DVO Order against them, thereby the abuser has been successful in misusing a system to switch the roles and controlling the genuine victim for as long as an Order is in place.
- Private FVO/DVO/s are served by police and registered on the Federal system for FVO/DVO's – yet, a victim had to pay for it – a victim has to pay for the Application and the Court process - something that should have been undertaken by police and free of charge. That is not an equitable system.
- The above is essential inquiry even moreso for those who live in border towns.

- The Family Court System is Australian wide however, the FVO/DVO systems although recognised Federally, are State based legislation/laws. It makes no sense and makes the whole system more complicated and in favour of abusers.

The points above highlight the need for ALL Australian States to have ALL legislation/laws concerning family and domestic violence (not just the actual FVO/DVO) or some other means of legislation and laws surrounding the initial complaint of family and domestic violence, to be one and the same across all of Australia.

Given what I have highlighted above, I hope the Committee can realise there is a need for:

- a more adequate (federal) financial resource other than Legal Aid for genuine victims to be able to access to ensure a victim who is drawn into the private system has the means necessary to oppose a vexatious Application which would cause significant harm to them. Legal Aid will not take on cases that requires a victim to travel interstate for a court case.
- an Australian wide approach (Federal) to all family and domestic violence matters from the first instance; in the absence of this then.
- A need to approach and push ALL states to implement coercive control laws immediately and without delay.
- The need for ALL states to have the same legislation and laws so there is no loophole of a misunderstanding by an abuser/defendant.
- A further or widening inquiry expanding terms of reference to include an inquiry into the private FVO/DVO system without just referencing to the Family Court System.
- The Committee, keeping at the forefront of their mind, when considering ideas from all who make submissions, 'how can this be misused by an abuser'. No system is perfect, but by being proactive not reactive, we can work to reduce all forms of family and domestic violence.

Attached to this is information regarding a current matter before Court that highlights many of the issues I have raised. I give permission for this submission to be made public, however, I do request the attachments be redacted from submission when doing so. Whilst I understand that the Committee cannot consider individual matters, I have attached it as it demonstrates anecdotal evidence of the matters I have raised and how the two-tiered system does and is failing genuine victims.

I thank you for considering my submission and the points raised.

Kind regards,

Tracy Sedman for
Sexual Safety Australia

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