Committee Secretary

House of Representatives Standing Committee on Social Policy and Legal Affairs

PO Box 6021

Parliament House

Canberra ACT 2600

Dear Secretary

Re. Consultation on the Terms of Reference for the Inquiry into Family Violence Orders (Inquiry)

Thank you for the opportunity to make a submission to the public consultation on the proposed terms of reference, specifically with reference to Family Violence Orders ("FVO") and the effective enforcement of those orders.

This submission has been prepared by me on behalf of the Nerang Neighbourhood Centre Inc. However, the views expressed below are those of the Centre and are not necessarily representative of divisional leadership or any other organisation or agency.

I am happy to provide further clarification on any area of the submission.

Opening Statement

At the time of writing this Submission, 46 women have died in Australia this year as a direct result of family violence, perpetrated (overwhelmingly) by men.

The Inquiry currently has four broad matters outlined in its draft Terms of Reference:

1. 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;
2. The current barriers for litigants in the family law system to obtain and enforce FVOs;
3. How FVOs could be more accessible for victims of violence going through the family law system; and
4. 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.

There are a number of issues observed with respect to these matters by front-line community workers acting to support and advocate for victim-survivors of domestic and family violence. I have outlined some of these – as they touch upon the Terms of Reference for the Inquiry – but have not addressed all of the possible aspects of the Inquiry's Terms of Reference. This does not indicate agreement or disagreement with any aspect of those additional matters.

Further, and for ease of reference, I will adopt the term "intimate, family and sexual violence" ("IFSV")[1] throughout this submission to reflect the very wide array of life-threatening behaviours that are far too often the subject of FVOs.

[1] In adopting this definition, I have combined the definitions of the Australian Institute of Health and Welfare for 'intimate partner violence': AIHW Website, <https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/intimate-partner-violence>; and 'family, domestic and sexual violence': AIHW Website, <https://www.aihw.gov.au/family-domestic-and-sexual-violence>.

Lack of unified definition

It is critically important that the Committee examine, and make meaningful recommendations to Parliament regarding, the fact a consistent and appropriate legal definition of what family violence is has eluded policymakers in Australia for decades.[2] Some individuals and groups (myself included) have argued that the lack of proper recognition of violence against women by the law has in fact contributed to the domestic violence problem in Australia.[3] In an article this year,[4] I drew attention to the fact that family violence, breaching family violence orders, coercive control, stalking and intimidation are already criminalised across much of Australia. However, the problem has largely been with the use of overly legalistic terms which marginalise, sideline, or even denigrate the women who are survivors of those offences:

> Appending the term "domestic" to acts of violence against women can connote that the acts of violence only occur inside the home or are acts in the private sphere. The stigmatising notion of domestic violence occurring "behind closed doors" has been one of the biggest challenges to raising and encouraging police action on these crimes.[5]

Equally, the formal legal language and technical terms required to demonstrate many sexual offences not only stand as significant barriers to women participating in the justice system, but also hamper police in their efforts to support women in times of great vulnerability:

> For a perfect example of the warping power of legal semiotics, consider the distinction made in some public cases between the suggestion of 'violent rape' and 'non-violent rape of refused consent'. In my view, this implies a spectrum of rape with 'violent' rape leaving the survivor in tears at one end while 'non-violent' or 'inadvertent' rapes sitting at the other. The words used in the criminal law encourage that dichotomy by recognising circumstances of aggravation like the use of a weapon, detaining the victim, or rapes of persons with a disability or cognitive impairment. In the same way, the word "rape" – derived from the Roman act of raptus, where women were snatched or carried away by conquering soldiers – has been replaced by legalistic terms like "aggravated sexual assault" and "penetrative acts without consent".
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> These words (and the content they convey) ignore the fact that the very act of rape involves violence. Every rape involves the abuse and exertion of power by a perpetrator to dominate and suppress the will of their target. Whether a survivor fights back, calls police, screams, or does none of these things is

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[2] Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law* (Final Report, 14 March 2011); Fact Check, 'Fact file: Domestic violence in Australia', *ABC News* (online, 6 April 2016) <https://www.abc.net.au/news/2016-04-06/fact-file-domestic-violence-statistics/7147938>; Nour Haydar, 'Calls for national definition of domestic and family violence a year on from Hannah Clarke murder', *ABC News* (online, 19 February 2021) <https://www.abc.net.au/news/2021-02-19/national-definition-domestic-family-violence-coercive-control/13169526>; Jordan Baker, Clare Sibthorpe, 'The physical abuse was criminal. Sarah's isolation and humiliation weren't. That now changes', *Sydney Morning Herald* (online, 26 June 2024) <https://www.smh.com.au/national/nsw/the-physical-abuse-was-criminal-sarah-s-isolation-and-humiliation-weren-t-that-now-changes-20240626-p5jozp.html>.

[3] Mona Lee Krook, 'Semiotic Violence', in Mona Lee Krook (Ed.), *Violence Against Women in Politics* (Oxford University Press, 2020) 187-214, DOI:10.1093/oso/9780190088460.003.0016; Ruth Preser, 'Feminist Semiotics of "Safe": Intimate Violence in the Time of Pandemic' (2023) 29(14) Violence Against Women, DOI: 10.1177/10778012231199103.

[4] Catherine Walker-Munro, 'Why doesn't the law protect more women from violence? It might have to do with semiotics', *The Spectator* (online, 8 June 2024) <https://www.spectator.com.au/2024/06/why-doesnt-the-law-protect-more-women-from-violence/>.

[5] Ibid.

> entirely irrelevant: any sexual act done without consent is violent by its very nature. They violate a survivor's sense of trust and safety, leaving many unable to ever have meaningful relationships.[6]

The impact of this failure to properly, adequately and accurately convey such violence cannot be understated. It is for this reason that I have taken to referring to such acts as "domestic terrorism",[7] to properly recognise the terror, horrific violence and shameful behaviours perpetrated against women by men.

Section 4AB(1) of the *Family Law Act 1975* (Cth) ("FLA") establishes that 'family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful'. This test requires that a court be satisfied that a.) violent, threatening or other behaviour has been engaged in by the person, and b.) that the behaviour by that person 'coerces or controls' a family member, or causes that family member to be fearful.

Problematically, none of the terms 'violent, threatening or other behaviour', 'coerces or controls' nor 'fearful' are defined in the FLA. Although section 4AB(2) of the FLA provides a non-exhaustive list of conduct that may constitute family violence, it does not provide the court with any guidance around matters that may or must be considered when the court undertakes the exercise of examining whether the behaviour 'coerces or controls' a family member, or causes that family member to be fearful under the FLA.

Penalties and sentencing laws often permit the court to consider aggravating factors. For example, the *Crimes (Sentencing Procedure) Act 1999* (NSW) allows the court to consider circumstances of aggravation where offences are committed:[8]

- By a person with a public office or especial trust;
- With a weapon or threat of use of a weapon;
- In company of co-offenders or inchoate offenders;
- In the presence of a child under 18 years of age;
- In the home of any person;
- Involving 'gratuitous cruelty';
- While the offender was on conditional liberty in relation to an offence or alleged offence.

Similar matters should be included in the FLA as non-exhaustive considerations for a court when determining whether or not family violence has been committed.

There are also analogues for these types of matters in State and Territory protective order regimes.[9] In Queensland, the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), section 6A(4) allows the court to consider the behaviour in the context of a relationship, irrespective of the length of the

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[6] Ibid.

[7] Catherine Walker-Munro, Brendan Walker-Munro, 'Domestic violence as terrorism: Can control orders succeed where DV orders have failed?' (2023) 48(2) *Alternative Law Journal* 120, DOI:10.1177/1037969X231158879; Catherine Walker-Munro, Brendan Walker-Munro, 'Countering Terror: Terrorism Laws, Domestic Violence & the Australian Context' (2023) 11(1) *Griffith Journal of Law & Human Dignity* 1.

[8] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 21A(2).

[9] *Domestic and Family Violence Protection Act 2012* (Qld) ('DFVP Act'); *Family Violence Act 2016* (ACT); *Crimes (Domestic and Personal Violence) Act 2007* (NSW); *Domestic Violence Act 1994* (SA) and *Intervention Orders (Prevention of Abuse) Act 2009* (SA); *Restraining Orders Act 1997* (WA); *Family Violence Protection Act 2008* (Vic); *Domestic and Family Violence Act 2007* (NT); *Family Violence Act 2004*(Tas)

relationship between the survivor and perpetrator and whether the actions are sporadic or part of a continuing court of conduct:

> *(4) Domestic abuse may, in the context of the relationship, be constituted by—*
>
> *(a) a single act, omission or circumstance, or*
>
> *(b) a combination of acts, omissions or circumstances over a period of time.*

Further, the FLA lacks any deeming provision which does not require the court to make findings adverse to the perpetrator prior to issuing an FVO. In the ACT, a court does not need to apply the rules of evidence for hearing any applications for protection orders.[10] In the *Domestic and Family Violence Protection Act 2012* (Qld), section 8(5) includes a rider applying to the definitions for 'domestic violence' that a court may make any order under the Act irrespective of whether a criminal burden of proof for that conduct has been met:

> (5) To remove any doubt, it is declared that, for behaviour mentioned in subsection (3) that may constitute a criminal offence, a court may make an order under this Act on the basis that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.

We therefore implore the Committee to carefully consider, and make recommendations to Parliament, that the definition of family violence in the FLA requires more substantive guidance to the court as to matters which may or must be taken into account.

> **Recommendation 1:** The Committee should consider, and make recommendations to Parliament, about expanding and clarifying the definition of family violence contained in section 4AB of the FLA to include additional non-exhaustive factors for the court to take into account.

Risks of escalation

When an FVO is issued by the Federal Circuit and Family Court of Australia ("FCFCoA") (such as during divorce, child custody or property proceedings), there are risk assessment processes which take place to identify sources of potential harm to the survivor. However, far too few of these assessments take into account the potential harm arising from the perpetrator's awareness of the protection order (again, whether made during court proceedings or later served).

In certain circumstances, where the court considers that the risk to the survivor is so substantial that it rises to a threat to their health or safety (or the health or safety of an associated person or family member, such as a child or parent) the court should be permitted to issue an FVO *ex parte* and allowing suspension of service. To avoid misuse of this provision, the court should be permitted to set an appropriate period of time (not exceeding fourteen days) during time the survivor, together with Police, may make appropriate safety plans with respect to the eventual service of the FVO.

> **Recommendation 2:** The Committee should consider enabling the court, consistent with section 60CG(2), to permit suspended service of FVOs for a period of up to fourteen days where there is a risk to the health or safety of a survivor or associated family member.

This power should also be delegable to judicial registrars, as too often in my experience perpetrators will use the lack of interim orders as an opportunity to engage in acts of "preparatory" family violence, i.e., the withholding of children or financial support until such time as interim orders are made. Non-judicial registrars holding office in the FCFCoA should also be delegated this power if they are satisfied

[10] *Family Violence Act 2016* (ACT), s 13A.

that either the interests of justice or the health and safety of any person would be threatened by failing to make the FVO.

> **Recommendation 3:** The Committee should consider whether the FLA be amended to enable FVOs to be issued by appropriately delegated officers of the court, including in circumstances of emergency or threats to health or safety of any person.[11] Such orders could be issued immediately once the FCFCoA has been seized of jurisdiction.

Anecdotal evidence – but validated in my experience – suggests that once a perpetrator becomes aware of a FVO, their offending behaviours often increase. This can be complicated where, during family dispute resolution required by the FLA prior to a Part VII order, allegations of IFSV are aired during section 60I attendance. Family dispute resolution practitioners are not appropriately trained to handle such matters, and in any event such allegations do not automatically "skip" the step of family dispute resolution unless met by the satisfaction of the court.[12] This is especially the case if an offender engages in "image management" conduct, i.e., the protection of their reputation and "optics" of their behaviour, as this is often not recognised as IFSV.

> **Recommendation 4:** The Committee should consider whether the FLA be amended to enable family dispute practitioners to issue a certificate under section 60I(8) that *bona fide* allegations of family violence have precluded a party's participation in family dispute resolution.

Where FCFCoA proceedings are on foot, Police are often institutionally unwilling or unable to intervene, citing their concerns with potential interferences with the court's process and/or a conflict between Federal law (with respect to FCFCoA proceedings) and State or Territory law (being the enabling powers of constables in each State and Territory).

This may be remedied with a limited form of statutory immunity for Police who execute or enforce an order under the FLA. Such a limited immunity should be explicitly tied to concepts of both good faith and compliance with police powers legislation, but may go some way in ameliorating the problematic mindset inculcated in police officers who respond to such incidents.[13]

> **Recommendation 5:** The Committee should consider whether the FLA should provide a limited strand of statutory immunity to officers of State and Territory police forces who, acting in good faith and within the bounds of the powers granted by their enabling legislation, perform an act to enable or enforce an order of the FCFCoA (but especially a protection order).

Again, anecdotal evidence suggests (but again supported by experience) that offenders will take the lack of Police enforcement actions as a "green light" to commit further acts of IFSV. This can take the form of incredibly overwhelming volume of calls or messages on mobile devices or social media, increased breaches of "no contact" conditions, and partial or complete disregard for ouster conditions, and in extreme cases, acts of homicide or suicide.[14]

This situation quite simply cannot be allowed to continue. The law cannot permit even one act of IFSV to be committed once a FVO has been issued by the court. Although in my previous work I have argued

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[11] Consistent with FLA, s 67ZBB.
[12] Ibid, s 60I(9)(b)(iii) and (iv).
[13] For an example, see Holly Tregenza, Lia Harris, 'NSW Police officers have received coercive control training. This is what they were told', *ABC News* (online, 28 June 2024) <https://www.abc.net.au/news/2024-06-28/nsw-police-officers-training-coercive-control-scotland/104026788>.
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[14] Haydar (n 2).

for the imposition of "control orders" in a similar manner to the conduct of potential terrorism threats, I recognise that such matters are likely beyond the scope of the Committee. However, the Committee can consider whether a mandatory or presumptive imprisonment sentence is warranted for breaching a FVO.

Mandatory sentencing can be problematic, as it removes the discretion afforded to judges to appropriately consider and weigh the evidence before them. However, the utility of 'incapacitating' a perpetrator of IFSV[15] – that is, physically preventing them from committing further offences – has a certain attraction. It can provide a survivor with "breathing room" to arrange their affairs, leave a violent relationship, or change houses or jobs (as well as the significant administrative impost that comes with such changes). On the other hand, a presumptive penalty of imprisonment – imposing a mandatory sentence of imprisonment unless there is an overwhelming element of unfairness or hardship – exists in at least one jurisdiction involving IFSV.[16]

> **Recommendation 6:** The Committee should strongly consider recommending that the FLA be amended to reflect the principle that breaching a FVO, even for the first time, should be the subject of a sentence involving mandatory or presumptive imprisonment.

Current barriers for litigants in the family law system

One of the most common barriers to engagement for litigants in the FCFCoA is the involvement of multiple courts for family law proceedings under the FLA and FVOs. This can be exacerbated in situations where the proceedings for an FVO occur coincidentally or tangentially with proceedings in State or Territory courts for protection orders. Further, there is a significant delay in bringing on family law matters, owing in part to significant workload of the FCFCoA and in part to the requirement to engage in family dispute resolution under section 60I.

Two previous recommendations in this Submission (Recommendations 3 and 4) would address some elements of this problem. However, going further it is necessary for the Committee to recognise that once FLA proceedings are on foot, many statutory bodies – not just limited to police, but including child safety and disability agencies, housing providers, and aspects of the social service system – do not wish to address matters which (in their view) are more properly ventilated in court.

The primacy of the court in FLA proceedings is very apparent from the text of the FLA.[17] Section 60CA of the Act provides that the court must have regard to the child's best interests in making any order[18] (including the risk of family violence under section 60CG); yet there is scope to make the obligation to regard the rights and interests of the child "paramount", as is expressed in child protection legislation. For example, the *Child Protection Act 1999* (Qld) states at section 5A that "The main principle for administering this Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount".

> **Recommendation 7:** The Committee should consider whether the FLA should be amended to adopt a "paramountcy" principle in its opening sections, similar to child protection legislation.

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[15] Declan Roche, *Mandatory Sentencing* (Trends and Issues in Criminal Justice No. 138, Australian Institute of Criminology, 1999) 2.
[16] *Restraining Orders Act 1997* (WA), s 61A.
[17] For example, see the obligations of disclosure to the court imposed by sections 60CH and 60CI of the FLA.
[18] Consistent with Australia's obligations under the *UN Convention of the Rights of the Child*, namely articles 2(2), 3(2) and 3(3).

There are further issues at the intersection between FVOs and parenting orders, not because an order of the FCFCoA may override an existing FVO (they can and do[19]) but because instances have arisen where the underlying conduct giving rise to an FVO has not been adequately considered with respect to the parenting order. There is after all no obligation – either in section 68P of the FLA or elsewhere – that requires the court to take into account the risks of family violence, even despite the articulation of that risk in section 60CG.

This can result in men who pose significant and ongoing risks of horrific behaviours of IFSV, some of which have been witnessed or observed by the child/ren to whom the court has made orders, being obligated by court order to spend time with the perpetrator of those acts of IFSV.

> **Recommendation 8:** The Committee should consider whether the FLA should be amended to require the court, when making an order or granting an injunction under this Act that is inconsistent with an existing family violence order, to consider the conduct and/or findings of family violence that gave rise to the grant of the FVO.

Another issue arises because of the onerous nature of filing "relevant notices" in respect of family violence required by section 67ZBA(2) of the FLA. The court's obligation to 'take prompt action' arising under section 67ZBB(2) of the FLA, including the court's power to appraise itself of information or documents from other agencies under sections 67ZBD or 67ZBE, arises only when a proper notice has been filed under section 67ZBA. Further, the interested person doing so[20] must arrange for the section 67ZBA notice to be served on the perpetrator.[21]

Where a woman is represented by lawyers (which is the vast minority of such cases), the obligation to file a notice in proceedings and arrange for service is relatively trivial; though, the survivor will inevitably be retraumatised by having to recount, in a highly legalistic fashion, the allegations of family violence which were perpetrated against them. But if a woman is representing herself, she must navigate a complex legal form largely unassisted, find a way to present it to the court, and then formally serve the document on the perpetrator of violence (often requiring them to expose either themselves or a friend or other relative to physical risk).

Rather than imposing such onerous requirements on a survivor of IFSV, it would be more appropriate for the FCFCoA to adopt the approach of lower courts in handling protection order matters, where allegations of family violence may be made orally and tested by the Bench directly to achieve the relevant state of satisfaction. Further, the court should be required to take prompt action on allegations of family violence irrespective of whether the parties have formally filed such allegations under the Act.

> **Recommendation 9:** The Committee should consider whether onerous requirements for legal filing and formal service of allegations of family violence under section 67ZBA should be repealed, and instead replaced with the power of the court to 'inform itself as it sees fit'.

> **Recommendation 10:** The Committee should consider whether the obligation on the FCFCoA to 'take prompt action' on allegations of family violence should be extended to all proceedings, and not merely predicated on proper filing requirements under section 67ZBA.

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[19] FLA, s 68Q(1).
[20] Which can only ever be a party or the Independent Children's Lawyer: FLA, s 67Z(4).
[21] FLA, s 67ZBA(2).

Availability of wrap-around support services and security for victims of violence

One of the key provisions of support to litigants in family law proceedings has been the Family Advocacy and Support Service (FASS). FASS is routinely advertised to litigants as a support service combining 'free legal advice and support at court for people affected by domestic and family violence'. However, the practical reality for many participants in the family law system is that FASS is difficult to access and slow to respond, owing in part to the "housing" of FASS within the Legal Aid structures in most States and Territories. Further, the resources for FASS have not been publicly updated since 2019, and still features incorrect links and resources.[22]

Further, non-profit and social support for family law proceedings has become increasingly monetized. Organisations that should, consistent with their legal but also moral obligations, be supporting clients through family law proceedings are increasingly having to "do more with less". This can result in organisations which see themselves as offering "primary" support to a given client not being willing to share information about risk and safety planning if that client switches services or changes service providers.

Currently, any service providing support to a party to family law proceedings would be required to apply to the Chief Justice of the FCFCoA for a non-party access order (or via the *Freedom of Information Act 1982* (Cth) or other similarly unwieldy avenue), or to seek a subpoena in the proceedings on foot. Such orders may never be able to provide access to information held by a third-party provider, even in cases where that information might save a person's life from imminent harm.

In the child protection space, there are often overarching information sharing provisions which enable the free and relatively unfettered exchange of information relevant to the protection of a child (including information usually considered confidential by Police or child safety agencies). For example, in the *Child Protection Act 1999* (Qld), Chapter 5A broadly permits information sharing for *inter alia* assessment or investigation,[23] assessing care needs and planning services,[24] and for 'decreasing likelihood of child becoming in need of protection'.[25]

A similar provision could not only reduce the workload of the court in receiving and determining requests for information or the issue or responses to subpoenas, but also assist already resource-poor social support services in assessing and determining the appropriate support for their clients. It will also enable organisations to share information about assessments of risk that may save the life of a woman and/or her children – in 2022, the Queensland Coroner found that in Hannah Clarke's murder 'there was a failure by <u>all agencies</u> to recognise her extreme risk of lethality' (emphasis added).[26]

> **Recommendation 11:** The Committee should consider whether the FLA should include information-sharing provisions similar to and/or modelled from the child protection law, to enable the numerous stakeholders in the family violence process (Police, courts, child safety agencies, not-for-profits and services providers) to freely share information necessary to protect the women and children subject to those proceedings.

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[22] National Legal Aid, 'Family Advocacy and Support Service', *Family Violence Law Help* (website, 2019) <https://familyviolencelaw.gov.au/fass/>.
[23] *Child Protection Act 1999* (Qld), s 159MB.
[24] Ibid, s 159MC.
[25] Ibid, s 159MD.
[26] *Inquest into the death of Hannah Ashlie Clarke, Aaliyah Anne Baxter, Laianah Grace Baxter, Trey Rowan Charles Baxter, and Rowan Charles Baxter* (Coroners Court of Queensland, Southport, 29 June 2022) [537].

Further, there is the issue of grants of legal aid. Although the process for grants of legal aid may be beyond the scope of the Terms of Reference, it is important that survivors of IFSV are provided with appropriate support during their family law proceedings. In some cases, even despite declarations by the FCFCoA (or its predecessor courts) of family violence or the risk of it occurring, and/or the making of FVOs, Legal Aid agencies in the States and Territories have either refused second grants of aid or subjected those grants to their usual approval processes.

Survivors of IFSV, especially where the court has made findings of family violence and/or issued an interim or final FVO, should not be unnecessarily "abandoned" during their proceedings by the withdrawal or delay of their legal aid.

> **Recommendation 12:** The Committee should consider how legal aid applications could be expedited to individuals undertaking family law proceedings in circumstances where an initial grant of legal aid (or participation in FASS) has already been received.

Finally, there is the intersection of mental health and IFSV, matters which are often agitated in family law proceedings. Currently, judges and registrars are often required to navigate complex matters of mental health alongside allegations of family violence and disputes over property and children. This is not an ideal circumstance, and can lead to incidents or evidence not receiving due attention.

For that reason, the Committee may wish to consider whether a "diversionary" program in the FCFCoA (or its successor courts) would be appropriate. For example, Part 8A of the *Penalties and Sentencing Act 1992* (Qld) establishes the Queensland Drug and Alcohol Court program, allowing offenders to be judicially supervised to undertake treatment addressing drug and/or alcohol dependency and the intersection with their criminal offending.

Offenders must have pled guilty to the overarching offence/s and meet a series of criteria prior to being allowed by the court to participate in the diversion program. However, reports on the former Queensland Drug and Alcohol Court showed that 'recidivism is significantly reduced for those who successfully complete the [program]… reductions in offending pre- and post-program are greater for the…graduates than the comparison groups'.[27]

A similar diversionary program could be established under a new Part in the FLA. This program would require the party accused of family violence to admit to those allegations, and for a court to make a declaration to that effect.[28] The court could then be empowered to issue such orders under the FLA to "divert" the proceedings, allowing certain classes of perpetrators to undertake mental health, drug and/or alcohol treatment to appropriately mitigate their ongoing risk of family violence.

> **Recommendation 13:** The Committee should consider whether a "diversionary" system similar to the drug and alcohol court of Queensland (and elsewhere) could be appropriately adapted to the FLA jurisdiction.

Matters of jurisdiction

The last matter which this Submission will consider is the matter of the jurisdiction of the State and Territory courts with respect to family violence and FVOs.

Section 68R of the FLA permits the State and Territory courts making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under the FLA. Before doing

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[27] Toni Makkai, Keenan Veraar, *Final Report on the South East Queensland Drug Court* (Technical and Background Paper Series No. 6, Australian Institute of Criminology, 2003) 8.
[28] Consistent with FLA, ss 4, 4AB(1) and 67ZBB(2)(b).

so, the State or Territory court must make or vary a family violence order in the proceedings as well as being satisfied that the 'court has before it material that was not before the court that made that order or injunction'.[29] When considering to use a section 68R power, a State and Territory court must have regard to section 68N, 'whether spending time with both parents is in the best interests of the child concerned', and be satisfied that the FLA order or injunction has exposed or will expose a person to family violence.[30]

Amendment of these provisions is not recommended – the power for State and Territory courts to modify or annul orders of a Federal court is not strictly a usual practice; however, it facilitates a degree of lessening the workload of the FCFCoA in dealing with FVOs during concomitant family law proceedings.

However, should the Committee take up any recommendations made to it about amending how the FCFCoA considers family violence in the context of FLA proceedings, they should take care to equally pass those obligations onto the State and Territory courts to ensure there are no regulatory mismatches between Commonwealth and State judicial structures.

> **Recommendation 14:** Should the Committee consider changes to the FLA obligating the court to consider additional factors relevant to family violence, the Committee should also recommend that the FLA be amended to impose like obligations of consideration on State and Territory courts when exercising powers under section 68R (or any successor provision/s).

Conclusion

I believe that the Terms of Reference are broadly relevant and should go some way to addressing some of the policy concerns which exist in current family law proceedings, but requires significant consideration of the lived experiences of many victim-survivors to properly make recommendations for law reform to protect survivors from IFSV.

Thank you for the opportunity to make this submission.

Catherine Walker-Munro

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[29] FLA, s 68R(3).
[30] Ibid, s 68R(5).