

## Inquiry into Family Violence Orders

### Introduction

The Centre for Excellence in Child and Family Welfare (the Centre) welcomes the opportunity to provide a submission to the Standing Committee on Social Policy and Legal Affairs in response to the inquiry into family violence orders (FVOs) in Australia.

The Centre is the peak body for child and family services in Victoria and Tasmania. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community, and culture. We represent around 180 community service organisations, students, and individuals working across child and family services. Many of the organisations we represent work directly with children, young people, and families who have experienced, or are experiencing, the impacts of family violence. Our members have considerable expertise in this area and see firsthand the ramifications for children and families of FVOs which do not adequately protect them.

### Context

The 2016 Victorian Royal Commission into Family Violence (RCFV) described children as the 'silent victims' of family violence. Other RCFV findings in relation to children and young people in the context of family violence include that:

- Children and young people are rarely treated as victims in their own right.
- There is a lack of targeted resources to meet the specific needs of children and young people who have experienced family violence.
- Current policy does not pay sufficient attention to the effects of violence on children. Supporting children and young people must be central to family violence policies.
- The impact of family violence can be particularly profound for children, including behavioural and mental health challenges, disrupted schooling, homelessness, poverty, and intergenerational family violence.
- Although children are remarkably resilient, and many who experience violence and abuse go on to lead full and productive lives, there are many who will need counselling and/or other support to overcome the impacts of the abuse.

Research shows that service system responses for children victim-survivors still largely view children through the lens of the protective parent, seeing them as extensions of their primary carers without considering the differences between the needs of the parent or carer not using violence, and the needs of the child or young person.<sup>1</sup>

The RCFV also highlighted that people from culturally and linguistically diverse (CALD) communities are disproportionately affected by family violence, and they also face greater barriers to seeking assistance than those of an Anglo-Australian background.<sup>2</sup>

Another landmark study released in 2023, the Australian Child Maltreatment Study (ACMS), highlighted the extraordinary prevalence of child maltreatment in Australia, associated with early and persistent harm extending far beyond childhood.<sup>3</sup> The ACMS identified exposure to family violence as one of the most significant forms of harm that a child can experience. The study also found that Australians who have

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<sup>1</sup> Monash University (2023). I believe you: Children and young people's experiences of seeking help, securing help and navigating the family violence system'. <https://bridges.monash.edu/ndownloader/files/39221033>, p.7.

<sup>2</sup> Victorian Government, Victorian Family Violence Data Collection Framework: Data collection standards - Culturally and linguistically diverse communities, <https://www.vic.gov.au/victorian-family-violence-data-collection-framework/data-collection-standards-culturally-and>

<sup>3</sup> Harris, L. G., Higgins, D. J., Willis, M. L., Lawrence, D., Mathews, B., Thomas, H. J., ... & Haslam, D. M. (2024). The prevalence and patterns of maltreatment, childhood adversity, and mental health disorders in an Australian out-of-home care sample. *Child Maltreatment*, 10775595241246534.

experienced childhood maltreatment are substantially more likely to have a mental disorder, engage in health risk behaviours and to have high rates of health service utilisation.<sup>4</sup>

In the 2021-22 Personal Safety Survey, around 1 in 8 (13% or 2.6 million) people, aged 18 years and over, reported witnessing violence towards a parent by a partner before the age of 15.<sup>5</sup>

These and other studies and data collections highlight the prevalence and impacts of children's family violence experiences and the need for children and young people experiencing family violence and other types of harm to be seen and heard. This is particularly important in the context of FVOs where safety is of paramount concern.

### **Main challenges with FVOs**

Though designed to keep family members safe from perpetrators, FVOs do not always sufficiently protect children and families and can even increase the risk to victim-survivors. For example, family court proceedings can trigger an escalation in violence and aggressive behaviour by perpetrators and increase the risk to children and their protective parents, suggesting the need to treat these kinds of transition points with great caution.<sup>6</sup> This risk can prevent victim-survivors from requesting FVOs from the police in the first instance, but when there is an order in place it can also prevent them from reporting breaches or violations against the FVO. The onus is on the victim-survivors to report breaches and to trust the justice system to follow through.

There is a need for planning and ongoing support to keep victim-survivors safe from harm during the FVO term and beyond, and to identify possible risk of harm to children during this process. Substantial reliance on precedent orders may mean that, in some cases, orders may not be sufficiently responsive to the needs of the children and young people in individual cases.

There are significant barriers for people experiencing hardship and/or disadvantage. Interactions with the legal system in Victoria are not only emotionally taxing for victim-survivors, including children, but also come with a financial burden. For low-income earners, or for families experiencing co-occurring vulnerabilities and forms of disadvantage, the costs can be crippling. Though FVOs themselves are not costly, there can be substantial financial costs for a victim-survivor to have access to legal representation of their choosing for court system interaction.

The best interests of the child, their rights and safety, should be major considerations when any FVO or family law decisions are made. If there is potential risk of harm to the child or to the non-violent parent, regardless of court-decided parenting orders, the FVO should be able to protect the child during unsupervised visitation. An FVO does not necessarily stop a perpetrator from seeing their children, but there are times when individual circumstances (such as ongoing criminal charges against the perpetrator) should cause a suspension in visitation rights to ensure the safety of the child. There is also a need to place a minimum default length of time for intervention orders. Currently in Victoria over half of FVOs are issued for only 12 months or less, which is not enough time to make sure the victim-survivors are safe and/or have been able to access the therapeutic and other supports needed following an experience of family violence with court intervention.

The Centre for Innovative Justice has found that courts and statutory authorities 'regularly make decisions about the contact that a perpetrator can have with his family without much information about the type and nature of risk that he may continue to pose',<sup>7</sup> suggesting the need for better information sharing amongst services as has occurred in Victoria. The Family Violence Reform Implementation Monitor has also

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<sup>4</sup> Scott J., Malacova E., Mathews B. et al, (2023). The association between child maltreatment and mental disorders in the Australian Child Maltreatment Study. *Medical Journal of Australia*. 218 (6 Suppl): S26-S33, <https://www.acms.au/findings/>

<sup>5</sup> ABS (2023). *Personal Safety, Australia, 2021–22 financial year*. ABS, Australian Government <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#about-this-release>

<sup>6</sup> Backhouse, C. & Toivonen, C. (2018). National risk assessment principles for domestic and family violence. Companion resource. Australia's National Research Organisation for Women's Safety (ANROWS) for the Commonwealth Department of Social Service.

<sup>7</sup> Vlasis, R., Campbell, E. & Green, D. (2022). Reporting outcomes from change-based family violence perpetrator program work with court referrals. RMIT Centre for Innovative Justice.

highlighted issues around victim-survivors being misidentified as respondents on police applications for FVOs.<sup>8</sup> When a woman raises allegations of domestic violence or child abuse in the family there is the risk of being declared a hostile parent and having the children removed and placed with the perpetrator.<sup>9</sup>

### **Evidence-informed solutions**

The legal systems in each state and territory need to be safer, more inclusive, affordable, accessible, and supportive for victim-survivors of family violence, including children.<sup>10</sup>

A mechanism to report breaches remotely, possibly through an app, or easily accessible remote mechanism, could assist victim-survivors to feel safer when an FVO is in place. Having to report breaches to police and to have to physically enter a police station (often with young children) is potentially retraumatizing and damaging to the victim-survivor and their family.

It is important that the government continue to prioritise holding perpetrators to account for their actions (at a statewide level), to discern patterns and trends which can inform prevention and recovery from family violence, including identifying, preventing and/or mitigating any risks associated with seeking or implementing FVOs.

The Centre agrees with suggestions put forward by the Centre for Innovative Justice to improve the level of pre-court engagement for all parties so there is a better understanding of what will occur and why; and the need to ensure procedural justice to lessen the risk of aggrieved perpetrators not abiding by the FVO.

The views of children should be taken into account in relation to parenting arrangements and their own safety.<sup>11</sup> While this perspective was raised in relation to compliance with family law parenting orders rather than FVOs, the principle of children's voices being heard in relation to their own safety need to be enabled.

As national and state/territory governments have recognised, gender-based violence in this country is at a crisis point. We call for ongoing collaboration between state and territory governments and the Commonwealth to end violence against women and children, and reform of the current FVO and court systems in each state and territory is one step towards this goal.

We thank the Committee for their consideration, and for the opportunity to respond to this inquiry.

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<sup>8</sup> Family Violence Reform Implementation Monitor (2021). Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor. Victorian Government.

<sup>9</sup> Kaspiew, R., Carson, R., & Rhoades, H. (2022). Compliance with and enforcement of family law parenting orders: Views of professionals and judicial officers. (Research report, 01/2022). ANROWS.

<sup>10</sup> Victoria Legal Aid, A safe, accessible and inclusive family law system, <https://www.legalaid.vic.gov.au/safe-accessible-and-inclusive-family-law-system>

<sup>11</sup> Kaspiew et al.