

## Financial Abuse Service NSW



18 July 2024

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

By email: [spla.reps@aph.gov.au](mailto:spla.reps@aph.gov.au)

Dear Committee Secretary,

### **Submission to the inquiry into family violence orders**

Thank you for the opportunity to make this submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into family violence orders.

Redfern Legal Centre also endorses the submission of Women's Legal Services Australia.

### **Redfern Legal Centre's expertise in family violence**

Redfern Legal Centre's (RLC) [Financial Abuse Service NSW \(FAS\)](#) submission responds to all terms of reference for this inquiry. The submission and recommendations draw heavily from RLC's expertise in the field of family violence. RLC has over three decades of specialist experience in domestic and family violence (DFV) in New South Wales. In the 1990's RLC pioneered the Women's Domestic Violence Court Assistance Scheme – a comprehensive, integrated, and holistic approach to the provision of services for women seeking legal protection from domestic violence which has since been extended throughout NSW by Government.

Since 2019, RLC has provided legal advice and representation to NSW-based clients affected by financial abuse from an intimate partner, via our specialist Financial Abuse Service NSW. FAS is Australia's first state-wide multidisciplinary socio-legal service providing trauma-informed expertise to victim-survivors of financial abuse from an intimate partner who have complex, intersecting needs in the areas of:

- credit, debt and consumer law;
- family law;
- immigration law;
- financial counselling; and
- social work.

FAS engages in policy, law reform, and capacity building to improve responses to financial abuse. We have sole coordination responsibility for the Economic Abuse Reference Group (EARG). This national network

Gadigal Land, 73 Pitt St Redfern NSW 2016 | PO Box 1805, Strawberry Hills NSW 2012

Phone: 0481 730 344 Web: [rlc.org.au/fas](http://rlc.org.au/fas) Email: [falsintake@rlc.org.au](mailto:falsintake@rlc.org.au)

brings together over 50 community organisations from across Australia to provide expert input to industry and Government to improve responses to the economic impacts of DFV.

### Response to Terms of Reference

This submission responds to each of the Terms of Reference in turn.

#### 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.

In our experience, there is an escalation in the perpetrator's aggressive and violent behaviour during proceedings in the Federal Circuit and Family Court of Australia (FCFCOA). Quite often, the behaviour is less overt and more insidious. Aggressive behaviour takes many forms and includes but is not limited to:

- a) Veiled and open threats if the victim-survivor refuses to settle proceedings on favourable terms to the perpetrator.
- b) The use of systems abuse to perpetuate ongoing coercive controlling behaviour, including dragging out proceedings and increasing the victim survivor's legal bills.
- c) Failing, refusing, or neglecting to pay child support to perpetuate financial hardship.
- d) Using children to communicate veiled threats.
- e) Defaulting on loans in the victim survivor's name, impacting their credit rating.
- f) Using technology to monitor the victim survivor's correspondence.

Whilst the Committee's Terms of Reference relate specifically to better access in the family law system to family violence orders, we draw the Committee's attention to the pervasive use of systems abuse by the perpetrator as a form of aggressive and violent behaviour that escalates during family law proceedings. Whilst the FCFCOA can consider the conduct of the parties when making a costs order against a party, this provision is usually used after proceedings are concluded. It is prohibitive to have to proceed to a trial to seek recompense as a consequence of the behaviour of the perpetrator during the proceedings. Further, costs orders are rarely made on an indemnity basis and do not include the costs paid by a party on a solicitor-client basis.

#### Case Study

[Redacted Case Study Content]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*\* Name has been changed for the client's safety*

**Recommendation:**

- 1. Amend section 4AB of the *Family Law Act 1975 (Cth)* to include systems abuse as an example of family violence.**

- 2. The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:
  - a. the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO;**
  - b. the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO;**
  - c. the availability of wrap-around support services and security for victims of violence.****

There are significant barriers that impact the capacity of victim-survivors to obtain and enforce family violence orders (FVOs). When victim survivors are in hiding, obtaining a family violence order may disclose the location of the victim-survivor. State police will generally make an application on behalf of the victim survivor within their local area. This can identify the location of the victim-survivor. In some states and territories, state police have the option to apply in a different location. However, this requires the victim-survivor to travel at their expense to give evidence. FVO applications can also place the victim survivor in jeopardy as they can be followed from court.

It is our experience that the perpetrator will use any means at their disposal to intimidate the victim survivor, including any court attendances. Our lawyers have witnessed veiled threat directed at victim survivors while waiting to enter a courtroom. Further, notwithstanding the presence of security or support services available in the courts, the presence of the perpetrator within metres of the victim-survivor can be harrowing for a victim survivor, impacting their mental health and capacity to make informed decisions regarding the proceedings. We recommend that victim-survivors be permitted to attend and give evidence at any hearing via video conferencing to avoid having to attend court.

**Recommendations:**

- 2. Give all state and territory police the power to make an application for a family violence order at a different location to that of the victim survivor's residence.**
- 3. Permit victim survivors to give evidence via video conferencing in support of any application for a family violence order.**

The FCFCOA has the power to make a personal protection order under section 68B of the *Family Law Act 1975 (Cth)*. It is our experience that the state or federal police will not enforce such an order, notwithstanding their capacity to do so under the legislation. We believe this section of the legislation can be strengthened and given more substance if the order has the same force and effect as a family violence order made in a state court. This will allow the state police to arrest and charge the perpetrator under the relevant state family violence legislation for breach of the order. Funding should be provided to facilitate additional training for the state and federal police regarding the enforceability of orders made under section 68B of the Family Law Act 1975 (Cth). We acknowledge that this proposal will require consultation with and the support of the states and territories. The strengthening of this section of the Act can supplement any family violence orders made and should not be in lieu of a state family violence order.

#### Case Study

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*\* Name has been changed for the client's safety*

#### Recommendations:

4. Amend section 68B of the *Family Law Act 1975 (Cth)* to provide that any personal protection order has the same force and effect as a family violence order made within the resident state or territory of the person in need of protection.
5. Provide funding to facilitate training to federal, state and territory police regarding the enforceability of personal protection orders made under section 68B of the *Family Law Act 1975 (Cth)*.

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

- a. making it easier to apply for and enforce an FVO;
- b. co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia;
- c. the legal and non-legal support services required to promote early identification of and response to family violence.

While there are advantages in having family violence orders prosecuted within the same location as the FCFCOA we are of the view that the disadvantages outweigh any benefits. Applications for family violence orders are made by the police for the protection of the victim survivor. Breach of family violence orders can result in criminal charges and the location of any mention or hearing needs to demonstrate the severity of the proceedings. Whilst unintended, any family violence proceedings held in the FCFCOA may cause a perpetrator to perceive the proceedings as less severe emanating from the family law dispute. Having the proceedings in the same location or in connection with any FCFCOA proceedings may cause perpetrators to abuse the system and make complaints against the victim survivor to further their cause in the family law proceedings. We would also have concerns if additional obligations were placed on victim survivors. Any amendments should not alter the current obligation of the police to apply and prosecute family violence orders.

Such reforms may unintentionally further burden an already stretched family law system or exacerbate delays in the system. As discussed above, it is our experience that perpetrators will use systems to perpetuate coercive controlling behaviour. This behaviour is hidden and consequently more difficult to prosecute.

We repeat Recommendation 3 above that victim survivors be permitted to give evidence via video conferencing in support of an application and enforcement of a family violence order. Family violence orders will be more accessible to victim survivors if they are permitted to appear by video conferencing, particularly for those most vulnerable who are in hiding. It will address safety concerns for the victim survivor and assist in reducing the victim survivor's fear in having to be in the same premises as the perpetrator. It will further reduce the victim survivor's travel costs, necessity to take time off work, and other expenses such as arranging childcare to attend court.

**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.**

In addressing the impact of family violence and in particular financial abuse on the victim survivor, we await the outcome of the Attorney General's Department's consultation on the proposed amendments to the provisions of the *Family Law Act 1975 (Cth)* regarding property settlements. We draw the Committee's attention to the submission on the Family Law Amendment Bill (No. 2) 2023 made by the Economic Reference Group,<sup>1</sup> coordinated by Redfern Legal Centre's Financial Abuse Service NSW. The adoption of those recommendations will greatly improve the fairness of the Family Law system for victim survivors of family violence, and in particular financial abuse.

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<sup>1</sup> Economic Abuse Reference Group, *Response to Consultation Paper – Family Law Amendment Bill (No. 2) 2023* (Submission Paper, November 2023) <<https://earg.org.au/wp-content/uploads/Economic-Abuse-Reference-Group-submission-Family-Law-Amendment-Bill-No.-2-2023.pdf>>.

**Recommendation**

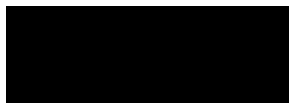
- 4. Implement the recommendations from the Economic Abuse Reference Group's submission on the Family Law Amendment Bill (No. 2) 2023.**

**Recommendations**

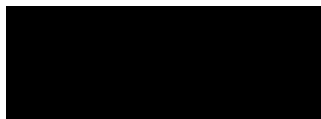
1. Amend section 4AB of the *Family Law Act 1975 (Cth)* to include systems abuse as an example of family violence.
2. Give all state and territory police the power to make an application for a family violence order at a different location to that of the victim survivor's residence.
3. Permit victim survivors to give evidence via video conferencing in support of any application for a family violence order and for the enforcement of a family violence order.
4. Amend section 68B of the *Family Law Act 1975 (Cth)* to provide that any personal protection order has the same force and effect as a family violence order made within the resident state or territory of the person in need of protection.
5. Provide funding to facilitate training to federal, state and territory police regarding the enforceability of personal protection orders made under section 68B of the *Family Law Act 1975 (Cth)*.
6. Implement the recommendations from the Economic Abuse Reference Group's submission on the Family Law Amendment Bill (No. 2) 2023.

We would be happy to address this submission in further detail with the Committee.

Yours faithfully,



Laura Bianchi  
Managing Solicitor  
Financial Abuse Service NSW  
REDFERN LEGAL CENTRE



Maria Monastiriotis  
Accredited Family Law Specialist  
Financial Abuse Service NSW  
REDFERN LEGAL CENTRE