

# Family Violence Reform Implementation Monitor

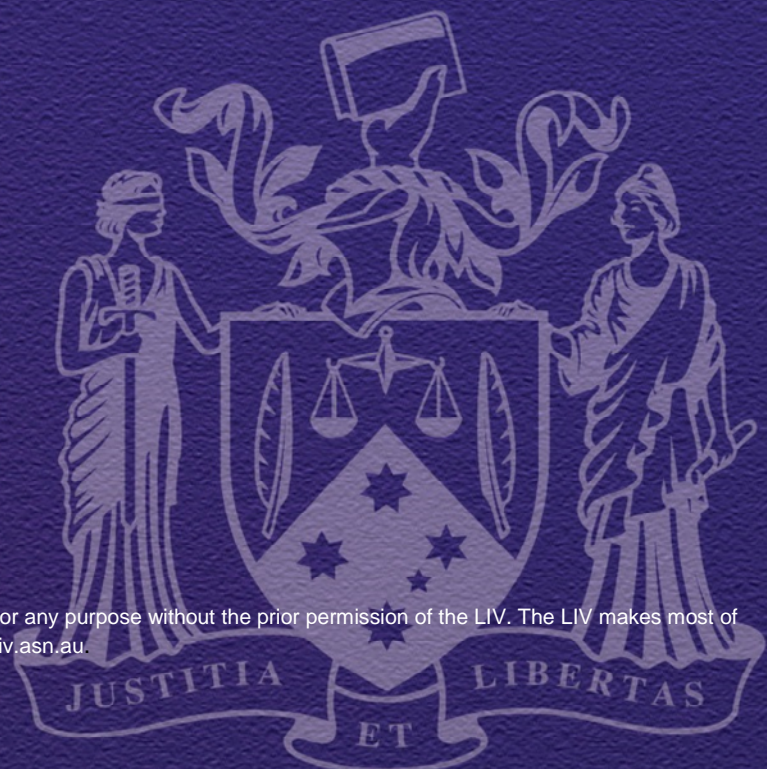
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# INTRODUCTION

The Law Institute of Victoria (**'LIV'**) welcomes the opportunity to provide a formal submission to the Office of the Family Violence Implementation Reform Monitor (**'the Monitor'**). Following the Royal Commission into Family Violence (**'RCFV'**), the LIV supports the Monitor overseeing the implementation of the RCFV recommendations. The Monitor's predecessor, the National Implementation Panel,<sup>1</sup> was an important mechanism for non-governmental organisations and relevant government departments to monitor the implementation of the National Action Plan. The LIV supports a continuation of this transparent approach and engagement with relevant stakeholder organisations.

The LIV is the peak membership body for the Victorian legal profession, representing approximately 19,000 lawyers, students and people working in the law in Victoria, interstate and overseas. Its members are legal professionals from all practice areas, who work in the courts, academia, policy, state and federal government, community legal centres and private practice.

The LIV's membership includes expert lawyers who specialise in assisting vulnerable families and children, for example, through providing frontline services for victims of family violence (**'FV'**),<sup>2</sup> and referrals to social support services, assisting perpetrators of FV navigate the justice system and access behavioural change programs, early resolution of family law disputes and child protection matters. This submission was informed by the LIV Family Law Section and the Criminal Law Section and speaks to the implementation of the RCFV's recommendations through the lens of expert lawyers from these practice backgrounds.

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<sup>1</sup> Senate Standing Committees on Finance and Public Administration, 'Domestic Violence in Victoria: National framework to address domestic and family violence' (20 August 2015).

<sup>2</sup> The term 'family violence' throughout this submission is one of broad interpretation and includes all manner of behaviours relating to someone trying to control their partner or family members with behaviours such as physical assault, sexual abuse, threats, humiliation, emotional abuse, financial exploitation and social isolation.

# Family Violence Service System Changes Since the RCFV

## Specialist and Therapeutic Responses to Family Violence

### **Specialist Family Violence Courts**

The LIV is largely supportive of the Specialist Family Violence Court ('**SFVC**'), which assists families who have complex needs, which often consist of a combination of FV, mental health and substance abuse. In taking a holistic approach of not simply punishing offending but addressing the root causes of the offending, our members are reporting marked improvements for their clients, both complainants and perpetrators. The LIV has received similar feedback from members regarding the Drugs Court, which was this year further expanded and operates similarly to the SFVC, in that it addresses the underlying factors contributing to offending.<sup>3</sup> Addressing the root causes of offending through a therapeutic response is proving to be an effective means of reducing reoffending.

The LIV suggests that child protection, family law and FV legal services form a part of what is envisaged as a broader integrated therapeutic response. This collaborative 'wrap around' care promotes community-based, family-centred services and support, which address broader issues caused by the victim's experience with FV.<sup>4</sup> By directing further funds and attention to primary prevention, this will reduce the pressures on community-supported services that are already struggling to meet the demands of its clients.<sup>5</sup> Accordingly, this will result in serving the best interests of families with complex needs, who require a focus on primary intervention and systemically targeting families that are assessed as being 'at risk' of FV and child protection and/or justice involvement. Primary prevention may be assisted, for instance, by promoting engagement with family-focused services and programs.

### **Men's Behaviour Change Program ('MBCP')**

One example of addressing offending and advancing primary prevention is the ability to order MBCP's by SFVC. Currently, Magistrates at the Ballarat, Frankston, Heidelberg, Moorabbin and Shepparton Magistrates' Court, under the Family Violence Court Division, can order a respondent to attend a MBCP. Magistrates from other courts can order a male respondent to

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<sup>3</sup> Attorney-General, 'Drug Court Expanded To Regional Victoria' (Web Page, 18 March 2020) <<https://www.premier.vic.gov.au/drug-court-expanded-to-regional-victoria/>>.

<sup>4</sup> Family and Relationships Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) 15 <<https://nla.gov.au/nla.obj-504850850/view>>.

<sup>5</sup> Women's Legal Service Victoria, 'Submission to the Senate Finance and Public Administration Committee' (August 2014) 5 <<https://www.apf.gov.au/DocumentStore.ashx?id=bb3b8833-b5f1-48c9-a929-4d28cc1021ba&subId=298891>>.

contact the Men's Referral Service and seek a referral to the program.<sup>6</sup> Given the anticipated expansion of the Family Violence Court Divisions, in line with the RCFV's recommendation 60 for all Magistrates' Courts of Victoria headquarter courts and SFVCs to have the functions of Family Violence Court Division Courts by July 2021; this will require increased training to applicant and respondent workers, and specialist FV services. The increasing specialisation of these fields and minimum standards required for the MBCP,<sup>7</sup> has led to Australian National Research Organisation for Women's Safety suggesting a need for appropriate training for professionals and new practitioners in the field of MCBP and FV. The intended aim is to minimise unsafe practices by new practitioners and enable capacity for program provision growth.<sup>8</sup>

Moreover, the SFVC operating model anticipates the need for the recruitment of specialist staff and the provision of multi-disciplinary training, in line with Family Safe Victoria's minimum standards.<sup>9</sup> These standards provide that perpetrator intervention systems need to be skilled in responding to the complex dynamics of FV. As part of the ten-year FV industry plan, family contact workers and facilitators would require relevant qualifications in men's behavioural change programs including undertaking the Victorian Risk Assessment and Risk Management Framework training and accumulated the requisite number of hours of observation for facilitators.

The LIV seeks to reiterate its support of the implementation of recommendation 210 of the RCFV for the HECS-HELP benefit scheme to extend to graduates employed in specialist family violence services and associated legal services provided to victims of family violence.<sup>10</sup> Recommendation 209 seeks to introduce mandatory qualifications for specialist family violence practitioners by 31 December 2020. The LIV suggests that to meet the foregoing 'minimum standards', increased family violence competency training for practitioners be required during both pre-admission practical legal training and post-admission through CPD offerings. This is consistent with the LIV's submission to the Council of Attorneys-General Family Violence Working Group.<sup>11</sup>

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<sup>6</sup> Magistrates' Court of Victoria, Family violence courts and counselling orders (Web Page, 13 Feb 2020) <<https://www.mcv.vic.gov.au/about/family-violence-courts-and-counselling-orders>>.

<sup>7</sup> Family Safety Victoria, 'Men's Behaviour Change Minimum Standards' (June 2020) <<https://ntv.org.au/wp-content/uploads/2020/06/FINAL-MBCP-Minimum-Standards-1-1.pdf>>.

<sup>8</sup> Australian National Research Organisation for Women's Safety, 'Evaluation readiness, program quality and outcomes in men's behaviour change programs (Research Report, April 2019) 30.

<sup>9</sup> Family Safety Victoria, 'Men's Behaviour Change Minimum Standards' (June 2020) [9] <<https://ntv.org.au/wp-content/uploads/2020/06/FINAL-MBCP-Minimum-Standards-1-1.pdf>>.

<sup>10</sup> Royal Commission into Family Violence (Report, 2016) ('recommendation 210').

<sup>11</sup> Law Institute of Victoria, Submission to the Council of Attorneys-General Family Violence Working Group, 'Options for Improving the Family Violence Competency of Legal Practitioners' (25 September 2019) ('recommendation 1 and 3').



## Integration Between SFVC and Family Law System

The provision of specialist services ordered through the SFVCs, need to be balanced by a greater integration of the family law system with these specialist services. This integration will mitigate the risk of enhanced specialisation further entrenching the culture of siloes of each specialist area. It will also break down the current operation of family law continuing to be treated as one area of specialisation and FV another. As Family Violence Intervention Orders ('FVIO') are often sought by parties to family law proceedings, the LIV urges greater integration between the Magistrates' Court and the Family Law Courts, as well as between the Federal Circuit Court and the Family Law Courts. Harmonisation across state jurisdictions and between the federal and state courts will ensure that FV is identified and responded to appropriately and consistently. This is particularly necessary given the large amount of self-represented litigants in FV matters.

Without greater integration, families who straddle both systems will be prone to greater risks to their safety. The LIV supports the initiatives implemented under recommendation 135,<sup>12</sup> for respondents to be better informed of the Magistrates' Court's jurisdiction under the *Family Law Act 1975 (Cth)*, which provides that a Magistrate can decide to revive, change or suspend the parenting order for a limited time as part of the intervention order.<sup>13</sup> However, the Australian Law Reform Commission's ('ALRC') Review of the Family Law System recognised that despite the amendments granting Magistrates' these powers, they 'have been reluctant to exercise their powers under the *Family Law Act*', despite the aim of these measures being to reduce the 'fragmentation of jurisdictions in cases involving FV'.<sup>14</sup> It has been acknowledged by the ALRC that the system, as it stands, 'does not deal well with violence' due to the complexity of navigating multiple jurisdictions and/or multiple courts in the same jurisdiction.<sup>15</sup> Both the Magistrates' and Children's Court of Victoria's submissions to the ALRC said that the 'role of state courts in federal/state jurisdictional divide should be given careful consideration'.<sup>16</sup> Their submissions note the importance of re-examining whether, and in what

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<sup>12</sup> Royal Commission into Family Violence (Report, 2016), ('rec 135: Magistrates' Court consider revising the form and content of family violence intervention order applications').

<sup>13</sup> Magistrates' Court of Victoria, 'Family Law' (Web Page, 22 May 2019) <<https://www.mcv.vic.gov.au/family-matters/family-law>>.

<sup>14</sup> Royal Commission into Family Violence, Report and Recommendations (2016) ('rec 133').

<sup>15</sup> Australian Law Reform Commission, 'Family Law of the Future — An Inquiry into the Family Law System' (Report, March 2019) 111; see also Julie Stubbs and Jane Wangmann, 'Competing Conceptions of Victims of Domestic Violence within Legal Processes' in Dean Wilson and Stuart Ross (eds) *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 107.

<sup>16</sup> Magistrates' Court and the Children's Court of Victoria, Submission to the Australian Law Reform Commission's 'Inquiry into the Family Law System' (Submission 419); Australian Law Reform Commission, 'Family Law of the Future — An inquiry into the Family Law System' (Report, March 2019) 118 [4.27].

areas, are Magistrates' Courts best suited to meeting the needs and desired outcomes of delivering 'the right combination of specialist skills and experience, which promote the best interests of families in a simpler, less costly and more accessible court environment'.<sup>17</sup>

Whilst the Crime Statistics Agency has noted data about the volume of FVIO applications, and the gender of the applications,<sup>18</sup> the Victorian Magistrates' Court, which has the highest volume of cases in the jurisdiction, 'has no data on the overall number of cases where parties are self-represented'.<sup>19</sup> The LIV queries whether the current provision requiring the Court to inform parties of the ability to exercise powers under s68R of the *Family Law Act*, is sufficient in detail. The LIV is concerned that some self-represented parties would not fully understand the potential implications certain proceedings could have for their children under existing parenting orders. The LIV would support a review of this process to ensure that Magistrates are effectively informing self-represented parties about the impact of their FVIO proceedings.

The LIV believes that there is a need for prevention and response frameworks through the development of an integrated care model for FV. A recent survey by the NSW Law and Justice Foundation in 2019, documented respondents who had experienced FV.<sup>20</sup> The survey found that those who had reported experiencing FV in the previous year were significantly more likely to experience a wide range of legal problems; ranging in family, civil and criminal law matters; as well as experiencing severe broader life impacts related to areas, including employment, health, financial and housing issues.<sup>21</sup> These findings call for the promotion of integrated care both within the justice sector that promotes consistency of legal training and practice across the continuum of legal jurisdictions. Promoting 'integrated care' models for FV legal practitioners and state-wide FV services is increasingly important given the pervasive nature of FV and the broader life impacts. The LIV supports the call for an inter-sector collaboration and consultation that prioritises the improvement of FV support and service system responses across the justice sector, relevant legal jurisdictions and community stakeholders. The LIV suggests that these responses should involve:

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<sup>17</sup> Magistrates' Court and the Children's Court of Victoria, Submission to the Australian Law Reform Commission's 'inquiry into the Family Law System' (Submission 419).

<sup>18</sup> Crime Statistics Agency 'Magistrates' Court: Family Violence Data Dashboard (1 July 2014 – 30 June 2019) <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>>.

<sup>19</sup> Department of Justice and Regulation, Access to Justice Review: *Volume 2 Report and Recommendations* (August 2016) 472.

<sup>20</sup> NSW Ministry of Health, 'The Case for Change: integrated prevention and response to violence, abuse and neglect in NSW Health (January 2019) 44 <<https://www.health.nsw.gov.au/parvan/Publications/case-for-change.pdf>>; see also Family and Relationship Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) <<https://nla.gov.au/nla.obj-504850850/view>>.

<sup>21</sup> Family and Relationship Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) 10.

- Immediate accessibility to integrated and family-based servicing to address the needs of children and families experiencing complex needs;
- Early service engagement by strengthening early intervention and prevention services before the family situation deteriorates to the point of requiring crisis intervention;<sup>22</sup> and
- Development of FV workforce capacity for primary prevention. This is aligned with recent government calls for legal and inter-sector capability frameworks that are aligned with integrated care practices and focus on FV prevention.<sup>23</sup>

## Integration of FV Information Sharing

The LIV welcomes the Family Violence Information Sharing Scheme, which provides that prescribed organisations, including the Children’s Court of Victoria, Correction’s Victoria, the Department of Health and Human Services (**‘DHHS’**), the Magistrate’s Court of Victoria and Victoria Police can share information to assess and manage the risk of family violence.<sup>24</sup> The amending Act, the *Family Violence Protection Amendment (Information Sharing) Act 2017* removes the word “imminent “ from the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*, in recognition of the RCFV’s recommendation that many FV cases will not meet this threshold, despite posing a serious risk to the affected family members (**‘AFM’**).

## Support and Safety Hubs

In 2017, in response to the RCFV, Family Safety Victoria (**‘FSV’**) was established to operate within the DHHS. Its responsibilities were to establish and coordinate the delivery of Support and Safety Hubs’ (**‘Hubs’**) to assist FV victims seeking help and to provide a holistic view of clients’ needs, such as providing referral pathways for social support. The Victorian Auditor-General’s Office (**‘VAGO’**) however, has evaluated the Hubs as having not yet fully implemented the recommendations of the RCFV.<sup>25</sup> The LIV supports the nine VAGO recommendations in response to improving the Hubs and are pleased by the report that the DHHS have accepted all of the VAGO recommendations and subsequently provided VAGO with an action plan detailing how it will address them.<sup>26</sup> Given many of our members’ clients’

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<sup>22</sup> NSW Ministry of Health, *The Case for Change: Integrated Prevention and Response to Violence, Abuse and Neglect in NSW Health* (2019) 44

<<https://www.health.nsw.gov.au/parvan/Publications/case-for-change.pdf>>.

<sup>23</sup> Commission for Children and Young People, ‘Rapid Impact: Taskforce 1000 Reflection’ (2016) 25 <<https://ccyp.vic.gov.au/assets/Publications-inquiries/taskforce-1000-reflection.pdf>>.

<sup>24</sup> *Family Violence Protection Act 2008*, Part 5A.

<sup>25</sup> Victoria Auditor-General’s Office, ‘Managing Support and Safety Hubs’ (27 May 2020) <<https://www.audit.vic.gov.au/report/managing-support-and-safety-hubs?section=33489--audit-overview>>.

<sup>26</sup> Ibid.



would utilise such facilities, the LIV welcomes the opportunity to consult with the FSV and DHHS as this action plan is implemented.

## Social Housing and Crisis Support

The LIV strongly supports the establishment of the Family Violence Housing Implementation Task Force (**'Task Force'**).<sup>27</sup> The LIV is supportive of the Task Force addressing the removal of hurdles to accessing FV crisis accommodation, supporting transitions from transitional to durable accommodation, providing FV Flexible Support Packages (including rental subsidies); and evaluating the ability of social housing to meet demand. Since its inception, the LIV commends the Task Force's initiatives, including the \$152 million FV Housing Blitz package, research on the shortage of long-term social housing in Victoria, and building a profile of data to meet the needs of women and children experiencing FV who require a crisis supported response. The LIV anticipates that the shortage of affordable rental housing amidst COVID-19, alongside the increase in FV reports, will increase the current projections for social housing needs in Victoria. Current projections estimate that over 30,000 additional dwelling's will be needed in the next 20 years, if Victoria is to maintain long-term social housing at the current rate of 3.5 per cent.<sup>28</sup>

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<sup>27</sup> Royal Commission into Family Violence (Report and Recommendations, March 2016) ('rec 19').

<sup>28</sup> State Government Victoria, 'Victoria's Social Housing Supply Requirements to 2036' (May 2017) <<https://www.vic.gov.au/sites/default/files/2019-06/Victorias-social-housing-supply-requirements-to-2036.pdf>>.

# What Is Still Required in the Family Violence System?

## Baseline Funding to Meet the Demand for Legal Aid

The additional funding provided by the state government to assist for frontline services, such as the Victorian Aboriginal Legal Services ('VALS') and Community Legal Centres ('CLC') operate amidst the COVID-19 pandemic, is to be commended.<sup>29</sup>

In addition to a considerable number of vital services, these frontline services offer free advice to FV victims. Members have reported that it is often the case that Respondents for a FVIO will also have multiple matters in both the criminal and family law systems. Where criminal law matters are on foot, the provision of services from organisations such as Victoria Legal Aid ('VLA'), is essential for the provision of advice that can facilitate just outcomes for both an AFM and Respondent. For example, members report that when looking at mitigating circumstances to reduce the culpability/sentence, it is common to ask for a community corrections order that involves wraparound services such as anger management for FV perpetrators and for FVIO to be put in place to ensure that the Respondent is separated from the AFM/s to prevent further offending.

As such, the LIV notes that whilst VLA has made the decision to reduce the number of duty lawyer services due to the absence of sufficient funding, they have chosen to prioritise the Family Advocacy and Support Services ('FASS'), an essential integrated service and measure for early intervention, prevention and referrals to social support services. Notably, a report evaluating the FASS noted that while it is an effective and important program, 'it cannot itself address the systemic factors impacting the experience of family law clients with family violence matters.'<sup>30</sup> The priority placed on providing this essential support to meet the growing demands of FV victims and providing support for persons who have a risk or history of FV amidst COVID-19,<sup>31</sup> has required VLA to limit eligibility for other services, including for child protection grants of assistance and family law duty lawyer support. As VLA are continuing to confront additional challenges due to the deferral of case and by prioritising the delivery of their FASS, the LIV wishes to raise the urgent need for increased additional baseline funding for VLA.<sup>32</sup> It is

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<sup>29</sup> Victoria Legal Aid, 'Extra funding for legal assistance pandemic response welcomed (9 May 2020) <http://www.legalaid.vic.gov.au/about-us/news/extra-funding-for-legal-assistance-pandemic-response-welcomed>.

<sup>30</sup> Inside Policy, *An Evaluation of the Family Advocacy and Support Services* (Final Report, 18 October 2018) 6.

<sup>31</sup> Victoria Legal Aid, 'Reducing duty lawyers services' (9 June 2020) <https://www.legalaid.vic.gov.au/about-us/news/changes-to-family-law-duty-lawyer-services>.

<sup>32</sup> Victoria Legal Aid 'Changes to legal aid from 1 July 2020' (23 June 2020) <https://www.legalaid.vic.gov.au/about-us/news/changes-to-legal-aid-from-1-july-2020>.

essential for VLA to be supported as they confront financial sustainability challenges, to ensure that further limits to their services are not required moving forward.

## Criminal Justice Responses to Intimate Partner Violence

Intimate Partner Violence ('IPV') is a leading contributor to illness, disability and premature death for women aged between 18 – 44 years of age.<sup>33</sup> Almost 40 per cent of women continue to experience violence from their partner while temporarily separated.<sup>34</sup> The LIV believes that short custodial periods would increase the immediate risk to victim survivors. This is because:<sup>35</sup>

- FV perpetrators often cite the behaviours of the victim survivor as a reason for their offending;
- Where the breach of a CCO has relied entirely upon the victim survivor reporting it, perpetrators may blame them for their sudden custody;
- Evidence suggests that shorter periods of custody do little to reduce an individual's level of aggression. In fact, in some cases it can be increased. Upon release, perpetrators may seek to relieve their anger by seeking out and punishing the victim.

The available evidence suggests that the most effective approaches to reducing FV reoffending are: <sup>36</sup>

- Adjourned undertakings that have rehabilitative conditions attached to them, such as attendance at a men's behavioural change program;<sup>37</sup>
- SFVC as the preferred jurisdiction;
- Judicial monitoring;
- Specialised supervision;
- GPS monitoring;
- Co-ordinated community response; and
- Risk assessment.<sup>38</sup>

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<sup>33</sup> ANROWS, *Examination of the burden of disease of intimate partner violence against women in 2011* (Research Report, 2016) <<https://www.anrows.org.au/publication/examination-of-the-burden-of-disease-of-intimate-partner-violence-against-women-in-2011-final-report/>>.

<sup>34</sup> Australian Bureau of Statistics, 'Personal Safety Survey' (2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>

<sup>35</sup> LIV Submission to the Sentencing Advisory Council, 'Swift, Certain and Fair approaches to sentencing of Family Violence Offenders' (13 April 2017) <[https://www.liv.asn.au/getattachment/8166d9e1-39d4-4836-b5ac-db9d024651d3/20170412\\_SUB\\_LPCRIM\\_SwiftCertainFairFV\\_FINAL-\(2\).pdf.aspx](https://www.liv.asn.au/getattachment/8166d9e1-39d4-4836-b5ac-db9d024651d3/20170412_SUB_LPCRIM_SwiftCertainFairFV_FINAL-(2).pdf.aspx)>.

<sup>36</sup> Ibid.

<sup>37</sup> Sentencing Advisory Council, 'Sentencing Practices for Breach of Family Violence Intervention Orders' (Final Report, 2009) 59.

<sup>38</sup> Marna Miller et al. 'What Works to Reduce Recidivism by Domestic Violence Offenders?' (2013) *National Criminal Justice Reference Service* 7.

## Addressing Over-Representation of ATSI Children in FV Matters

The LIV finds it disconcerting that Aboriginal and Torres Strait Islander ('**ATSI**') children are significantly over-represented in FV matters in both care and detainment.<sup>39</sup> There appears to be a reportedly high prevalence of 'crossover kids' in the youth justice system. As noted by the Sentencing Advisory Council in 2019:

*"for children removed from their families into out-of-home care, this may also include removal from the child's community, friends and school and their experience of care can compound the trauma that they have already experienced."*<sup>40</sup>

The ongoing issue of trauma exposure by ATSI children raises concerns about what extent child removal impacts on the child's need for family engagement and cultural identity and connection to land, family and kinship.<sup>41</sup> With 28 per cent of the Australian Indigenous population reporting FV as the main reason for homelessness,<sup>42</sup> survivors of FV, often women and children, are commonly forced to decide between leaving the family home for their safety, or homelessness. The Australian Housing and Urban Research Institute ('**AHURI**')s report found that Indigenous women have very few housing pathways after experiencing FV.<sup>43</sup> While FVIOs are commonly used to exclude males or perpetrators from the family home, often ATSI males faced with no viable alternative other than homelessness, will choose to violate the FVIO and return to the family home.<sup>44</sup> The LIV suggests that this may be an ineffective policy for ATSI families experiencing complex needs.<sup>45</sup> Reportedly, the consensus among service providers was that sending ATSI men to jail for breaching an FVIO was only exacerbating

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<sup>39</sup> Australian Institute of Health and Welfare, Youth Detention Population in Australia, Bulletin no. 145 (2018) 2.

<sup>40</sup> Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (Report, 2019) Executive Summary xxv  
<[https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Crossover\\_Kids\\_Report\\_1.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Crossover_Kids_Report_1.pdf)>.

<sup>41</sup> Department of Health and Human Services, Aboriginal Children in Aboriginal Care: Information Sheet (2017) 1  
<<https://www.dhhs.vic.gov.au/sites/default/files/documents/201808/ACAC%20info%20sheet.doc>>.

<sup>42</sup> AIHW, *Aboriginal and Torres Strait Islander People: A Focus Report on Housing and Homelessness* (Report, 29 March 2019) 54 <<https://www.aihw.gov.au/reports/housing-assistance/indigenous-people-focus-housing-homelessness/contents/at-a-glance>>.

<sup>43</sup> Kylie Cripps and Daphne Habibis, 'Improving housing and service responses to domestic and family violence for Indigenous individuals and families' (AHURI Final Report No. 320, Australian Housing and Urban Research Institute Limited, August 2019) 1.

<sup>44</sup> Ibid 24.

<sup>45</sup> Law Institute of Victoria, 'Submission to the Inquiry into Homelessness in Victoria' (16 March 2020) 331, recommendation 37  
<[https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Submissions/S331\\_-\\_Law\\_Institute\\_of\\_Victoria\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Submissions/S331_-_Law_Institute_of_Victoria_Redacted.pdf)>.

problems for women and children, including risk of homelessness, child protection involvement and child removal.

The RCFV noted that ATSI persons are less likely to report FV than non-ATSI persons, for a range of reasons including ‘fear about the consequences of disclosure [in particular child removal], distrust of government agencies and service providers, historical and cultural factors and a lack of access to support services’.<sup>46</sup> Facilitating access to culturally safe FV services, support networks, allied social and health services and programs, may promote improved engagement from ATSI communities. The LIV supports the work of the VALS in providing FV Client Support Officers to support ATSI clients through family or civil law matters, with the provision of appropriate referrals to access local support programs and emergency relief monies.<sup>47</sup> The LIV seeks to emphasise the importance of the services provided by VALS to fill the gap in the lack of culturally appropriate legal services, and considers that the removal of the service *Balit Ngulu* – a service for Aboriginal children with attendant therapeutic support – due to the absence of funding from state and federal governments, requires reconsideration of the commitments in the Aboriginal Justice Agreement,<sup>48</sup> in seeking to increase culturally appropriate legal services and promote the interests of ATSI children.

## Intervention Order Risk Assessment

Intervention Order risk assessments and identification of the primary aggressors are often difficult when the AFM is disincentivised from reporting FV, through coercion, control or a desire to maintain the family unit. For example, the Family Consultant in *Jardine v Sackville*,<sup>49</sup> asserted that it was not ‘uncommon for the victims of FV to deny their abuse when still under the effective control of the perpetrator and the Court accepted the view that the mother lied because she was ‘scared of the father’s reprisals’.<sup>50</sup>

LIV members have reported the importance of identifying the primary aggressors in FV situations, to ensure the best interests of the child is the foremost and primary consideration. Recent cases have highlighted situations where FV is alleged against both parents, by either party, which complicates the assessment of harm for the children. For example, in *Mortimer v Beaufoy* [2020] FamCA 367, the mother claimed that the father had been perpetrating violence

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<sup>46</sup> Royal Commission into Family Violence (Report and Recommendations, March 2016) Vol V, 28.

<sup>47</sup> Victorian Aboriginal Legal Service, ‘Submission to the Sentencing Act Reform Project’ (April 2020) <<https://vals.org.au/assets/2020/04/Sentencing-Act-Reform-Project-VALS-submission-2020.pdf>>.

<sup>48</sup> Victorian Aboriginal Justice Agreement, *Burra Lotjpa Dunguludja - The Aboriginal Justice Agreement Phase 4* (3 July 2020) <https://www.aboriginaljustice.vic.gov.au/the-agreement/the-aboriginal-justice-agreement-phase-4>.

<sup>49</sup> *Jardine v Sackville* [2020] FamCA 346 [66].

<sup>50</sup> *Ibid* [67].

throughout their relationship, using knives as fear tactics.<sup>51</sup> Meanwhile, the father alleged that on multiple occasions the mother perpetrated FV by hitting and pushing him.<sup>52</sup> As FV rarely takes place in the presence of independent witnesses, often the only available evidence of FV is the direct evidence of the parties. It should not therefore be limited if it may be relevant to the issues in dispute. It is that evidence, together with the response of the other party, which must be considered and evaluated in the context of a family law case insofar as it represents an unacceptable risk to the child.

### **Protected Witness Under the Family Violence Protection Act 2008 (Vic)**

The LIV considers the term ‘protected witness’ as per section 70 of the *Family Violence Protection Act 2008*,<sup>53</sup> and section 4 of the *Personal Safety Intervention Order Act 2010*,<sup>54</sup> to be appropriate. However, the term ‘protected witness’, interpreted to include ‘any’ family member of the AFM/protected person,<sup>55</sup> risks being overly broad. The LIV cautions against the use of language in referring to ‘any’ family members as ‘protected witnesses’, as it may be interpreted that parties with no need for concern regarding the Respondent, become protected persons. This inference has the potential to unfairly skew the proceedings against the Respondent in the event they violate an order spending time with someone who falls under ‘any’ family members of the AFM; regardless of that individual having no grievance or concerns towards the Respondent.

LIV members have also reported that it is not uncommon for an AFM to operate under an assumption that once they have obtained a FVIO, the Respondent has no right to see their child. This can sometimes be a motivation to obtain a FVIO in cases where the facts supporting the FVIO are situational, such as they are based on an incident at separation, as opposed to a bona fide ongoing need to protect the AFM from future harm. In such cases, often those parties were close to resolving family law disputes and a parent frustrated with the process turns to FVIO’s as a means of lashing out at the other parent. In *Heider v Heider* [2020] FamCA 291, a case in which the Court determined the children required protection from exposure to FV by both parties, the Court identified that this erupted ‘after separation of parties’ with the ‘circumstances of separation lead[ing] to [...] anger, and physical violence towards each other and themselves (suicide attempts)’.<sup>56</sup> After separation, the Court found that the father

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<sup>51</sup> *Mortimer v Beaufoy* [2020] FamCA 367 [184].

<sup>52</sup> *Ibid* [185].

<sup>53</sup> *Family Violence Protection Act 2008* (Vic), s 70.

<sup>54</sup> *Personal Safety Intervention Order Act 2010* (Vic), s 4.

<sup>55</sup> *Ibid*, s 70(c).

<sup>56</sup> *Heider v Heider* [2020] FamCA 291 [62], [84].



‘mounted a campaign to humiliate and punish the mother’.<sup>57</sup> The LIV considers these circumstances can lead to further violence against one another, and can lead to protracted family law disputes which are pursued ‘to get back at’ the AFM. Alternatively, the Respondent perceives that the motivation behind the AFM obtaining the FVIO is to prevent the Respondent from having a relationship with their children and this can lead to further acts of FV, particularly if the Respondent perceives they have nothing left to lose after losing their relationship with the AFM and their children.

## Impact of COVID-19 Pandemic

**What has been the biggest impact of the COVID-19 pandemic on your organisation or sector/ services that your organisation or sector provides had to change?**

The COVID-19 pandemic has highlighted the need for specialist FV servicing to work collaboratively with health, justice and other support services to ensure timely access to FV resources and alternative online modes of service delivery for families experiencing FV. This is particularly important for complex needs families experiencing FV, who potentially may face a greater risk due to potential isolation during the COVID-19 pandemic and may not otherwise be able to access adequate face-to-face assistance and support.

During the COVID-19 pandemic there has been a call for:

- Changes to FV response system in modes of service delivery (i.e. online and phone rather than face-to-face);
- Continuity of service provision;
- Collaborative inter-sector partnerships and referrals;
- Working in partnership with local stakeholders;
- Domestic Violence Victoria in collaboration with the Victorian Government and specialist FV services, has recently sought to systematically develop state-wide guidelines for continuity of service delivery while scaling service delivery modes in response to COVID-19 restrictions to face-to-face contact with clients and their families.

Further measures that have been promoted and observed during COVID-19 that are potentially useful to continue, may include:

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<sup>57</sup> *Heider v Heider* [2020] FamCA 291 [85].

- Workforce training during COVID-19 isolation, to enhance FV risk identification/screening and assessment;
- Reliable information dissemination to individual clients and families experiencing FV to enable individuals and families to navigate integrated the family violence service provision;
- Accessibility to information on FV services and allied support for communities at risk of family violence;
- Information sharing and family violence referrals to specialist support services—for instance, Family Violence Information Sharing Scheme;<sup>58</sup>
- Promoting contact between children and their birth families during COVID-19 restrictions by supporting families with virtual visits and video conferencing and offering flexible and new ways for connecting children and families to support family engagement and contact while mindfully promoting online safety; and
- Encouraging contact between young children and their birth families during COVID-19 restrictions, by facilitating safe in-person contact practices and reducing the long-term harm of establishing a disconnect of the parent-child relationship.

### **Has the COVID-19 pandemic highlighted any strengths or weaknesses in the family violence service system?**

With strict social distancing rules and lock down restrictions in place in Victoria, there has reportedly been an unprecedented rise in levels of stress and psychological distress, along with a heightened demand for crisis support services, as evidenced by a sustained increase in calls for crisis phone support services such as Lifeline, Beyond Blue and Kids Help Line.<sup>59</sup> Data released by the Federal Government also reported significant surge in calls to the FV services such as the 1800RESPECT helpline and MensLine Australia, with men also reporting a substantial increase in mental health and relationship concerns.<sup>60</sup> Further, there are concerns of perpetrator invisibility in the community as social restrictions prevent women from seeking help and FV remains restricted to the domestic environment.<sup>61</sup>

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<sup>58</sup> Victorian Government, 'Family Violence Information Sharing Scheme' (Web Page, 27 May 2020) <https://www.vic.gov.au/family-violence-information-sharing-scheme>.

<sup>59</sup> Nicholas Biddle et al, 'Service usage and service gaps during the COVID-19 pandemic' (2020) *ANU Centre for Social Research and Methods*, 6-8.

<sup>60</sup> Ibid.

<sup>61</sup> Naomi Pfitzner, Kate Fitz-Gibbon and Jacqui True, 'Responding to the "Shadow pandemic": Practitioners views on the nature of and response to violence against women in Victoria, Australia during the COVID-19 restrictions' (2020) *Monash Gender and Family Violence Prevention Centre*, 18.

The LIV notes that there appears to be a significant increase in issues of accessibility during the period of COVID-19 restrictions, especially during the peak of the pandemic. Services have reportedly restricted accessibility to much-needed support for individuals and families seeking to access FV services. The same issues can likewise be applied to families and individuals seeking alcohol and drug counselling and for everyday living concerns such as financial counselling and housing concerns. Respondents to a May 2020 survey commissioned by the Australian National University and the Australian Institute of Family Welfare, reported high levels of psychological distress due to heightened levels of anxiety and uncertainty during the isolation period of the COVID-19 pandemic.<sup>62</sup> The study found that women reported higher rates of alcohol consumption as they were forced to take on the stress of increased child caring roles.<sup>63</sup> While for men, a common reported predictor of increased alcohol intake was reduction and loss of employment.<sup>64</sup> Additionally, factors that have also reportedly increased the risk of FV during the COVID-19 pandemic have included increased unemployment, as well as financial and housing insecurity.<sup>65</sup>

According to the survey, common barriers to accessing support were:

- Calls going unanswered or an inundation of calls by phone operators.
- Inability to make appointments with support services.
- Lack of accessibility to information of 'how to' seek help.
- Being a migrant and living in rural or regional areas; and
- Males aged 35 – 44 were about 50 per cent less likely to reach out for help than women in the same age group.<sup>66</sup>

**Are there any changes resulting from the COVID-19 pandemic that you think should be continued?**

### **Remote Appearances and Online Applications**

One measure that arose out of COVID-19 that may assist in preventing the re-traumatisation and ensure the safety of victims is the process of remote hearings for intervention orders, as

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<sup>62</sup> Naomi Pfitzner, Kate Fitz-Gibbon and Jacqui True, 'Responding to the "shadow pandemic": practitioners views on the nature of and response to violence against women in Victoria, Australia during the COVID-19 restrictions' (2020) *Monash Gender and Family Violence Prevention Centre*, 8.

<sup>63</sup> Ibid 9.

<sup>64</sup> Ibid 9.

<sup>65</sup> Ibid 22-23

<sup>66</sup> Nicholas Biddle et al, 'Service usage and service gaps during the COVID-19 pandemic' (2020) *ANU Centre for Social Research and Methods*, 4-9.

well as the ability to file an application for an intervention order remotely. The LIV recognises that remote appearances may promote the safety of AFMs by avoiding potential face-to face contact with the Respondent, before and after a hearing; and alleviate stresses associated with giving evidence.<sup>67</sup> However, the LIV urges further consideration of the evidence base surrounding the processes of remote hearings in providing reparative and/or restorative justice for victims of FV. Additionally, further consideration is needed as to whether there is a possibility that participation via audio-visual link ('AVL') could make an AFM feel more marginalised in the process, inconsistent with the aims of restorative justice. Further consideration pertaining to the purposes of protection, when balanced with the need for restorative justice and maintenance of the family unit, may involve assessing the appropriateness of, as suggested by the Law Council of Australia, an AFM attending the Court in person, with the Respondent attending remotely.<sup>68</sup> This would ideally be a process whereby the AFM could decide and choose between appearing via AVL or attending Court in person.

### **Magistrates' Court Resourcing**

Recent findings have highlighted the large numbers of people who are self-representing in FV matters at the Magistrates' Court.<sup>69</sup> Self-represented litigants raise concerns over their right to a fair hearing and procedural fairness, particularly when their unsophisticated understanding of procedural matters such as giving evidence may put them at a clear disadvantage and invoke equality of arms issues.<sup>70</sup> Addressing the backlog within the various Courts will assist in the ability to appropriately deal with FV matters, particularly on the expiry of interim orders that have since been extended under the COVID-19 Omnibus Legislation.<sup>71</sup>

## **CONCLUSION**

The LIV welcomes further opportunities to provide feedback and be consulted on any proposed changes in the family law jurisdiction. Please contact Family Law Section Policy Lawyer Maurice Stuckey at [mstuckey@liv.asn.au](mailto:mstuckey@liv.asn.au), should you have any queries regarding this submission.

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<sup>67</sup> Mandy Burton, 'Specialist Domestic Violence Courts for Child Arrangement Cases: Safer Courtrooms and Safer Outcomes?' (2018) 40(4) *Journal of Social Welfare and Family Law* 537.

<sup>68</sup> Law Council of Australia, *The Justice Project* (Final Report, August 2018) 78 ('Pt.2 'Courts and Tribunals').

<sup>69</sup> Department of Justice and Regulation, *Access to Justice Review* (Report, Vol II, 2016) 472.

<sup>70</sup> *Austin v Dobbs* [2019] VSC 355 at [86].

<sup>71</sup> *Family Violence Protection Act 2008*, s207B.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. P. Pandya', written in a cursive style.

**Sam Pandya**

President

Law Institute of Victoria