More than just a piece of paper

Getting protection orders made in a safe and supported way:

Responding to Recommendation 77 of the Royal Commission into Family Violence

Summary Report

Centre for Innovative Justice
February 2021

RMIT UNIVERSITY

Preface

This research is being published after a dramatic adaptation of Victoria's civil legal response to family violence. Delivered to government in July 2019, the findings and recommendations in this report were still being considered at the onset of the COVID-19 pandemic, when courts and legal services were suddenly required to shift to conducting urgent matters online.

It is important to understand, therefore, that the findings and recommendations in this report were developed in the 'pre-COVID' environment - one where the majority of interactions occurred in a face to face setting, which the Royal Commission into Family Violence (RCFV) described to powerful effect. This context was one in which access to services often depended on parties being present at court, but where the 'churn' of activity made the experience overwhelming and difficult to understand. The potential for an Affected Family Member to be in close proximity to a respondent also kept many away; while long delays and transactional exchanges did little to dispel the perception of many respondents that the process was unfair.

Three years on from the release of the RCFV's extensive recommendations, this research by the Centre for Innovative Justice (CIJ), found Victorian courts and associated services still toiling valiantly to respond to huge caseloads, while simultaneously adapting to wide-ranging reforms. Accordingly, the CIJ proposed a path for giving better and more meaningful effect to the legislative context in which this was occurring, while also bringing more nuance into the process – in many cases, slowing things down. This was so that a Family Violence Intervention Order (FVIO) became more than 'just a piece of paper'; and so that parties had access to legal advice and support *prior* to coming to court and therefore understood what had actually occurred.

Fast forward 18 months and the extent of change required to keep the FVIO process operating has been breathtaking. The speed at which Victoria's FVIO system moved to online operation was both commendable and previously unthinkable for many of those familiar with the complex considerations involved – a move seen by many as paying great dividends for all involved.

This is because remote working can mitigate challenges associated with physically attending court, such as going through security, as well as enduring chaotic and crowded waiting areas. It can also reduce the fear of being in physical proximity with someone who has perpetrated violence; as well as remove barriers for people who do not have the resources for childcare or for travel, especially for those in regional areas. Anecdotal reports shared with the CIJ by the end of 2020 therefore suggested that 'attendance' or engagement had increased in certain contexts.

Without the court functioning as a physical place in which parties and practitioners congregate, registry legal and support services also began to contact parties prior to hearings. This often entailed multiple phone calls or messages in order to gain instructions or provide advice or support. The effort behind the scenes involved a great deal more coordination than the system-driven procedures of the physical environment but, in many cases, meant that parties had the opportunity to process and absorb information in ways they would not have done before.

The lessons from this shift have yet to be fully documented, although are beginning to be captured in the context of other ongoing evaluations and research. Just as all Victorians have had mixed experiences of the shift to interacting online, however, we should not assume that all the changes have been felt as positive by those who interact with our courts.

We know, for example, that privacy and safety are essential to consider in each individual case. The dangers of remote engagement for victim/survivors of family violence, in particular, are considerable where this does not occur with support services available and where the court cannot be confident that the perpetrator of that violence is not actually present in the same room. Similarly, we know that a respondent's resentment at a court outcome - particularly where the exchange online has been experienced as transactional or unfair - could potentially be meted out on those around them.

Just as relevantly, we know that the challenges of understanding legal terminology or processes can be mitigated by a client's close proximity to their lawyer, particularly for a client who is from a linguistically diverse background, has low literacy or a cognitive impairment. Equally, the experience of a court hearing can still be highly re-traumatising, regardless of whether it occurs remotely or in person. The support that people often need in these circumstances is not something which is easily replicated online.

As we continue to transition to a 'COVID normal' way of working, therefore, courts have the opportunity to explore the lessons of the last 12 months, apply the benefits, but discard those aspects which did not prove useful or safe.

One of those benefits foreshadowed by the CIJ's recommendations in this report is the level of pre-court engagement which legal services and Victoria Police began to conduct with parties. The remote service environment has seen Victoria Legal Aid, Community Legal Centres and Victoria Police attempting to provide parties with more information and an opportunity to ask question ahead of time, when things are less stressful and when information is more likely to be absorbed. Doing so has come at a considerable and commendable effort from all involved, however, and will not necessarily be sustainable once the full extent of court processes resume.

Just as importantly, the CIJ's recommendations for greater emphasis on procedural justice have implications for how the experience of remote service delivery is harnessed into the future. Prior evidence establishes, and this research confirmed, that the way in which a court process is experienced, and an outcome reached, is central to the effectiveness of that outcome. This means that people who are respondents to FVIOs are more likely to follow those orders if they feel that they have been treated with fairness and respect. By contrast, if respondents feel that 'the system is against them' - as did many respondents interviewed for this research - they are more likely to disregard the order or, just as dangerously, leverage the mechanisms of that system against a victim/survivor.

The manner in which all actors in the legal system interact with parties to FVIOs therefore has implications for these orders' success. What we found in this research was that system activity does not equate with system effectiveness - that safety comes just as much from the expertise, reliability and consistency of risk management, enforcement and access to supports which surround an FVIO process than it does from the act of simply 'getting the order in place'.

That means that simple access to the legal system – whether physically or remotely - is only one step in a very complicated equation. If the lessons from the remote service delivery revolution are to be harnessed to useful effect, therefore, it will be crucial to understand what works for whom and in what circumstances, all while keeping the benefits of access to the physical court environment firmly in mind. To complicate things further, this will need to occur against a backdrop of increased demand from a shadow pandemic of family violence; significant court backlogs, including delays in the period of time during which interim FVIOs are in place; and more pressure on the public purse than ever before.

Courts will therefore need greater support – and an evidence base - if the objectives of the FVIO system are to continue to be realised. This means that the CIJ's call for a system re-set still rings true and is perhaps even more relevant than it was prior to the pandemic. With all the lessons from the last 12 months incorporated, we need to ensure that the FVIO system works at every point towards safety, accountability and the supporting legislation's original intent.

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Summary Report

Research brief

From mid 2018 to mid 2019, the Centre for Innovative Justice at RMIT University (the CIJ) was engaged to conduct research in support of the implementation of Recommendation 77 of the Royal Commission into Family Violence (RCFV). This recognised that, where Family Violence Intervention Orders (FVIOs) are reached 'by consent', this does not necessarily occur as the result of a safe, supported or consistent process.

This research was therefore an opportunity for a 'deep dive' into a very specific aspect of the legal response to family violence (FV) which the RCFV did not have the opportunity to conduct in as much detail. What's more, the CIJ found that the vast majority of FVIOs are reached by consent, or without one or both parties present, rather than going to hearing. This made the urgency of the RCFV's recommendation even more compelling.

Early stages of the research also signalled that this predominant process was not always functioning in ways which met the legislative aims of the *Family Violence Protection Act* 2008 (FVPA). Largely as a result of the overwhelming demand to which the system continues to respond, the CIJ found that practitioners associated with the legal response were often falling into 'default' modes of operating which did not necessarily centre the FVPA goals of safety and accountability every time.

As such, this report promotes a **shift from system activity to system effectiveness**, re-centring safety and accountability and the original objectives of the FVPA. Equally, it promotes a shift from the goal of 'getting the order made' to 'getting the right order made, in the right way' which can maximise the value of an FVIO for each person it is supposed to protect.

To this end, this research offered a necessary reflection on the mainstream civil legal response to FV – one which has been in operation in its current form since the passage of the FVPA in 2008. Because orders reached by consent quickly emerged as being the predominant way in which FVIOs are imposed by the courts, it also offered a reflection on the intersection of this process with the wider RCFV reform landscape. This is useful, not only to acknowledge the unprecedented effort and investment occurring across the system, but also to identify where efforts and momentum need to be increased.

Important to note, the bulk of participants in the research were not specifically focused on the impact which crucial RCFV related reforms (such as, but not limited to, the new Family Violence Information Sharing (FVIS) regime, the Multi Agency Risk Assessment and Management (MARAM) framework, Orange Doors, the Central Information Point, as well as the expansion of Specialist Family Violence Courts (SFVCs)) will have on their practice. It may therefore be useful to consider further research with a similar range of legal system professionals and court users in the future to establish the extent to which these major reform pieces are being experienced on the ground, noting that a number of these initiatives (FVIS, MARAM, the SFVCs and the Orange Door) are subject to their own current evaluations.

That said, the CIJ has endeavoured to maintain attention on those matters which were *not* the direct focus of specific RCFV recommendations. A brief discussion of the issues which participants regularly identified as ongoing needs and the project's Advisory Committee similarly raised - but which were the subject of existing reforms as a result of or preceding the RCFV - is featured below but was out of scope of the research.

Research approach

As alluded to above, Recommendation 77 called for the establishment of a committee to oversee the investigation of the process relating to FVIOs imposed by consent. Accordingly, this research was overseen by an Advisory Committee of individual representatives from the Department of Justice & Community Safety (DJCS) the Magistrates' Court of Victoria (MCV), Victoria Police, Victoria Legal Aid (VLA) and a specialist Community Legal Centre (CLC). Members of this committee developed a research framework and received a Literature Review and two Interim Reports from the CIJ, as well as providing comment on the CIJ's draft proposals.

The commissioned research was entirely qualitative, predominantly relying on personal and professional accounts obtained through the conduct of 61 focus groups and interviews with a total of 148 participants, including specialist FV services; as well as Magistrates, court staff, Court Network volunteers, Victoria Police, VLA and CLCs practising in and around the six different court locations.

The CIJ also conducted research with a relatively small sample of Affected Family Members (AFMs) and respondents.[1] Here the CIJ notes the challenges of recruiting vulnerable service user participants safely and appropriately for qualitative research, but also notes that the imperatives for qualitative research in terms of sample sizes differ significantly than that of quantitative research and that these samples were equivalent to sizes in other well recognised studies in this field.[2] The CIJ also supplemented this data collection with two days of court observation at each of the six participating courts, findings from which also informed our analysis.[3]

Conducted by a team of six CIJ researchers, all of whom also have legal practice experience, the results of the research represent an in-depth and triangulated (between different practitioner and court-user accounts, as well as CIJ observations) view of Consent Order practice in a range of locations, including regional and metropolitan, specialist and non-specialist courts.

Important to note, the CIJ was *not* asked to conduct quantitative research, such as examining the rates of resolution of orders by consent or correlating subsequent proceedings. This data is difficult to extrapolate from the current information which is able to be collected by courts, with the pending Magistrates' Court Case Management System likely to alleviate this data gap in the future. The Crime Statistics Agency Family Violence Portal does not include data at this level of detail (see also discussion in appended methodology regarding quantitative analysis in reports commissioned as part of the RCFV).

Equally useful to note, the CIJ was not asked to conduct demand modelling or to cost resource implications associated with this report's recommendations. These implications have been flagged, but were beyond the scope of the research brief.

During the process of analysis and writing, the Advisory Committee was able to inform the CIJ of contemporaneous and relevant policy developments. This context of ongoing and dynamic

[1] 'AFMs' and 'respondents' are the terms used in relation to FVIOs, so will be the predominant terms used throughout this and the full report.
[2] Nakkeeran N, (2016) 'Is sampling a misnomer in qualitative research? *Sociological Bulletin* 65*:* 40-49, Hood JC (2006) Teaching against the Text: the Case of Qualitative Methods, *Teaching* Sociology, 34, 207-223; Greg Guest, Arwen Bunce and Laura Johnson, L (2006) How Many Interviews are Enough? An Experiment with Data Saturation and Variability *Field Methods* 18: 59-82. For a widely respected study specific to this field based primarily on an equivalent sample size of respondents, see Donna Chung, Damian Green, Gary Smith, and Nicole Leggett, (2014) *Breaching safety: improving the effectiveness of Violence Restraining Orders for victims of family and domestic violence,* Curtin University, Communicare, Western Australia Department of Child Protection and Family Support.. ;
[3] Further details of the research methodology is provided in Appendix A to the Full Report, albeit details such as court locations and services supporting court-user participants are not included due to the ethical imperative to ensure that participants were able to participate anonymously.

reform is important to acknowledge and will continue to impact on considerations of this report's recommendations into the future.
It is vital, however, that independent research about contemporary practice and service user experience continues to inform and fuel the momentum of this agenda, including lending weight to the value of crucial reform in the face of competing resource demands.

Research scope

As noted above, despite potential assumptions that 'Consent Orders' may be an *alternative* to the predominant type of FVIO matter being heard at contested hearing, court staff, lawyers, police and service providers all reported that FVIOs either by consent, or imposed ex-parte (without the respondent's appearance) are the *vast majority* of FVIOs, with contested matters being the exception.

> *High into the nineties [percent], most of the applications result in an order by consent without admission.*
>
> **Court focus group, 30 November 2018**

Participants indicated that it was very unusual - being in the order of a couple of hearings per year at a large regional court, for example - for applications to proceed to contested hearing. While some matters may not initially resolve, the CIJ heard that each new adjournment date of an interim or contested order represented an opportunity for the matter to 'resolve' and be imposed by consent.

Participants also observed that this meant that the majority of FVIOs are made by what appears to be a largely transactional process. This is despite the fact that the relevant legislation and procedures are designed primarily on the presumption that evidence is heard and contested in open court and decisions made accordingly. Some participants also questioned inquiries about whether the 'process' by which FVIOs were reached or negotiated by consent was safe and supported – arguing that, in reality, there was no real process or negotiation (safe or not) at all and that, in many cases, they were just 'flying by the seat of [their] pants'. This did not in any way reflect a lack of duty of care by professionals, but simply the volume to which most courts were responding.

Important to clarify at the outset, research participants did not suggest that a preferable approach would be for the majority of FVIOs to go to contest. While this report has proceeded on the basis of interrogating the benefits and challenges in relation to Consent Orders, therefore, the CIJ's research findings also indicate that Consent Orders can have a number of benefits that may result in better overall results, including in comparison with orders made *ex parte*. These benefits include, as the CIJ heard throughout the research:

- the process of negotiating a Consent Order *may* decrease respondent narratives of unfairness, of not being heard and of 'the system' being against them;
- having a respondent at court *may* increase the court and broader system's capacity to assess risk and negotiate orders which address risk;
- having respondents at court increases opportunities to ensure that respondents understand orders;
- having respondents in the court room increases opportunities for Magistrates to articulate and enact procedural justice, to exercise judicial supervision and invoke the court's authority to underline expectations about appropriate behaviour, as well as to identify and articulate the impacts of FV behaviours, including on children; and

- having respondents at court avoids issues around service on respondents which currently impact frontline police resources and risk delay in the order being effective.

That said, research participants also observed that it was equally important to remember that the court experience also carries with it a range of risks and disadvantages, particularly for AFMs. These include:

- where court attendance further entrenches an AFM's sense that she is not believed;
- where an AFM leaves (or never attends) court without a full understanding of FVIO conditions;
- where court attendance or the imposition of the FVIO has prompted opportunities for an AFM's (former) partner to deploy legal processes against her; and crucially
- where breaches of that FVIO are then not enforced by police.

Equally, while the imposition of an FVIO will be experienced as a kind of system consequence by respondents, if attendance at court (where this occurs) is confusing and does not provide opportunity to feel heard, this can fuel a sense of victimisation and resentment. As the CIJ's research confirmed, this resentment is likely to be directed not only towards the AFM, but towards 'the system' as a whole – in turn potentially making breaches of an FVIO more likely because the FVIO is perceived by a respondent as evidence of his own victimisation, not as evidence of the need to change his behaviour.

This means that substantially more nuanced, tailored and considered work needs to occur either side of the imposition of an FVIO, regardless of whether it is reached by consent, for safety and accountability to be realised. The CIJ heard that further risks in relation to FVIO applications include:

- escalation of behaviours arising out of contact associated with any FVIO negotiation;
- the use of coercive and controlling tactics to force an AFM to consent to mutual orders which may subsequently be deployed to criminalise her and/or be mobilised in relation to parenting negotiations in family law proceedings;
- even in the absence of mutual applications, that consent to conditions may also be a 'bargaining chip' used by respondents in relation to family law negotiations;
- the potential for a rote, anonymous or procedurally unjust court experience increasing a respondent's sense that 'the system is against him', as noted above; or discouraging an AFM from reporting breaches or seeking further service system help.

One Magistrate participant, in particular, noted the value – and companion challenge – of ensuring that respondents attend court and at least have the opportunity for a brief dialogue with the Magistrate. This was despite the fact that parties are usually highly stressed when they come to court for an FVIO matter, often very quickly following their imposition of a police Family Violence Safety Notice (FVSN) or a respondent's exclusion from the home by police. Arguably, this was one of the primary tensions sitting at the core of this research.

> *…If they don't turn up, all we do is make the order and the police serve it. There isn't that reinforcement. There isn't the ability to refer to services. There isn't the ability to perhaps remind them of better ways of dealing with conflict and to, if they've already made changes, to praise them for that and encourage them…If people aren't here we can't do it.*

Approach to issues intersecting with broader reform

As mentioned above, professional participants across the research – as well as some service user participants – referred to the sheer volume of matters to which courts were responding. This included the time which police, lawyers, court staff and Magistrates were able to spend with each party or on each FVIO application, as well as the demand on police following the imposition of an FVIO where a respondent had not attended court and then had to be located to be served with the order.

Many professional and service user participants also referred to the imperative for better design and facilities of court buildings which could allow for safe entry, exit and waiting areas for AFMs, as well as audio visual links for AFMs 'offsite'. The CIJ notes that reforms in relation to AFM safety at court are in train, including through substantial investment in court infrastructure and redevelopment. Similarly, trials of offsite links for AFM appearances are in operation, as is the rollout of a system which will enable AFMs to apply for FVIOs online and thereby reduce time at court.

While these reforms are still being implemented, however, the CIJ has noted in this report that current gaps in safety at court should not prevent court responses from ensuring that AFMs can access appropriate support and advice which can assist them to understand FVIOs. As discussed in Part 2 of the report, the CIJ has also noted that, even when safe waiting areas exist, this does not guarantee that AFMs have understood the FVIO process or feel that they have been heard.

Many participants, including service user participants, also observed that the current FVIO response at courts was still not serving parties from Culturally and Linguistically Diverse (CALD) communities well. The CIJ notes recommendations from the RCFV and accompanying reforms in train to improve access to interpreters and other supports for CALD communities, including the Victorian Government Guidelines on Policy and Procedures for Interpreting, Translating and Multilingual Information Online, as well as community legal education initiatives developed and delivered by Victoria Legal Aid. Specifically relevant to this research, however, the CIJ has made findings and recommendations directly in relation to service users' capacity to understand the legal process and FVIO conditions.

Some professional participants also discussed the relevance of ongoing reform of police practice which could improve the quality of police-led applications; the confidence of AFMs to report breaches; and harness opportunities to increase understanding and service engagement of service respondents. While these broader issues were out of scope, the CIJ has noted specific recommendations in relation to police interactions with AFMs and respondents at court which can improve the FVIO process for all parties.

Further, multiple participants discussed the value of court-based support practitioners – including, but not limited to Applicant and Respondent Practitioners, as well as Koori Support and other Family Violence Practitioners. Many professional participants also strongly emphasised the need for family violence matters to be heard by Magistrates with specialist training in family violence and a sophisticated appreciation of safety and risk.

The CIJ notes the RCFV recommendations regarding expansion of SFVCs, as well as ongoing training delivered to Magistrates regarding family violence. Specific to this research, however, the CIJ makes recommendations to clarify understanding of the legislative basis of FVIOs and to reinforce the FVPA's objectives of safety and accountability. The CIJ has also made specific recommendations which encourage a focus on procedural justice by judicial officers, as well as recommendations which discourage overly adversarial practice by lawyers and systems abuse by respondents.

Finally, multiple participants noted the relevance of intersecting legal issues and the importance of the court's capacity to be alive to, and address, relevant criminal, family law or child protection issues, including access to information through the co-location of statutory agencies, such as Child Protection. The CIJ notes recognition by the RCFV of the benefits of integrated court responses and has made specific recommendations to build appreciation of these intersecting issues amongst practitioners working in the FVIO jurisdiction.

Structure of the Summary and Full reports

The CIJ offers its recommendations with a dual focus, being to improve the fundamental premise and driving forces behind the imposition of FVIOs by consent on the one hand; and to improve the effectiveness of relevant processes on the other.

Part 1: Jurisprudence and System Logic: Consent and 'getting the order in place'

This Part responds to a key finding of the research, being that significant variation in practice, understanding and interpretation of the consent provisions of the FVPA exist. Accordingly, Part 1 discusses relevant legislative sections and clarifies the basis for orders made by consent, distinguishing FVIOs from an 'ordinary' civil jurisdiction. It also implements a request from some Magistrate participants in the research who highlighted their concerns about divergent understanding about the relevant jurisprudence. As such, Part 1 is focused on the legal and judicial foundation which supports the imposition of FVIOs by consent.

Part 2: Safe, supported, standardised and streamed responses,

Part 2 is focused on the processes which surround and impact on FVIOs being reached by consent. Its findings draw from what the CIJ heard and observed about the rushed and 'one size fits all' nature of the FVIO response. Part 2 therefore describes a **proposal for streamed response to FVIO matters**. This proposal is just that – a proposal – and will require detailed consultation across government, relevant stakeholders and courts. Further, it will require relevant demand modelling and costing. Importantly, however, it attempts to harness the benefits of pre-court engagement with support and legal services by countering the 'churn' of FVIO responses and *slowing down* the process in appropriate cases.

The CIJ proposes that matters be differentiated upon the basis of safety and risk into three distinct 'streamed' responses, being: (1) an immediate court appearance stream; (2) pre-court support stream and (3) assisted shuttle negotiation stream. The CIJ also heard that parties' needed to be supported through more effective communication and prompts from the court, including via the MCV's Contact Centre. The CIJ therefore proposes that greater investment and energy be expended at an *earlier* point. This is so that the FVIO process is not only safer in the short term, but so that FVIOs imposed in this context are therefore more likely to meet the objectives of the FVPA over the longer term.

Part 3: Reforms to the current process.

Part 3 of the report then offers further recommendations to improve the existing process by which FVIOs are reached by consent. The CIJ suggests that these should be made a priority regardless of the Victorian Government's consideration of our proposal regarding streamed responses. This Summary Report sets out a brief rationale for the CIJ's findings, followed by the relevant recommendation. Further detail is contained in the CIJ's full report.

Part 1: Jurisprudence and System Logic: Consent and 'getting the Order in place'

In this Part of the Summary Report, the CIJ examines the legislative basis and significance of orders imposed by consent. In particular, the CIJ attempts to challenge assumptions that FVIOs by consent, including 'by consent without admissions' are simply a matter to be agreed between the parties, with the court then functioning as a 'rubber stamp'.

It does so by clarifying a range of legislative requirements which, if not well understood, may be contributing to the imposition of FVIOs in a transactional way in some cases, rather than meeting the underlying purpose of the FVPA. It also highlights the fact that FVIOs made by consent are not akin to an agreed resolution between the parties in other civil contexts. Finally, it identifies the impact of the 'without admissions' function of Consent Orders, with proposals for amendment which may be more aligned to the FVPA's objectives, as well as broader expectations about the significance with which FV is viewed in other legal contexts.

Statutory mechanism of 'consent'

Section 78 of the FPVA is the primary legislative section which enables FVIOs to be imposed on the basis of the parties' agreement, or 'consent'. In particular, sub-sections 78(4) and (5) this section empower the court, at its own discretion, to conduct a hearing into particulars of the application *and/or* consider the potential risks to parties and/or their children posed by a proposed order.

Further, sub-section 89 of the FVPA requires the court to seek further information regarding any concurrent family law or child protection orders, while s 80 and s 91 require the court to evaluate the proposed order with paramount consideration of the safety of AFMs. Section 73I places further obligations on Magistrates in relation to determining whether children have been subject to FV. Statistical analysis presented to the RCFV suggests that over half of AFMs who accessed a support practitioner had one or more children in their care.[4] Crime Statistics Agency analysis of Victoria Police LEAP records also found that men were more likely to be repeat offenders in relationships involving children; and that a pregnancy or recent birth of a child were one risk factor for repeat FV offending.[5] This indicates that considerations around children will apply in a majority of Consent Order decisions.

Specialist lead FV Magistrates who participated in this research considered that they had an obligation to make further inquiries about a proposed order and to satisfy themselves that it met the legislation's objectives. In particular, participating Magistrates were keen to emphasise that the court should make a determination in relation to the appropriate duration of the order, rather than this being a matter for negotiation between the parties. In doing so, the court is again required to have regard to the safety of AFMs, including the potential duration of that risk (s97 ss1-2).

Given the nature and volume of evidence which is increasingly informing the imposition of FVIOs through police applications and RCFV related reforms, participating Magistrates were keen to emphasise that this lends further weight to the court's decision to impose an order. Further, participants in this research were also eager to emphasise that the extension of FVIOs should not require evidence of breaches but should be based on an assessment of ongoing risk.

[4] Courtney Van Tongeren, Melanie Millsteed and Brad Petry, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009-10 to 2013-14,* Series An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009-10 to 2013-14 (trans, Crime Statistics Agency; RCFV, Government of Victoria, 2016).20
[5] Ibid

The CIJ agrees that the FVPA places significantly more onerous obligations on judicial decision makers than to function as a 'rubber stamp'. Rather, our reading of the FVPA indicates that courts imposing orders by consent, whether on an interim or final basis, are required to make a decision that an order proposed by the parties will be consistent with the goals of the Act.

Accordingly, the CIJ's findings in this research include that greater clarification of the jurisdiction is required to ensure that the objectives of the legislation are always the central consideration, as well as to ensure that parties are aware that courts have an obligation to consider these objectives before imposing an order. This includes clarification that duration of an FVIO is not a matter for negotiation between the parties.

Clarification of this legislative basis of Consent Order decisions may be achieved through a number of avenues, including revision of existing Judicial College Family Violence Bench Book entries touching on Consent Orders; Practice Direction/s specifying relevant matters for legal practitioners to address in Consent Order negotiations and submissions; and training for Magistrates, lawyers, police lawyers, prosecutors and FVCLOs and court staff.

The CIJ suggests that Magistrates are well placed to lead ongoing practice improvement, actively focusing all system actors on safety and accountability goals consistent with existing legislative imperatives of the FVPA 2008.

RECOMMENDATION 1: Clarification of the jurisdiction should be reflected in the Family Violence (FV) Bench Book and in FV training for all practitioners

Organisations which currently publish content or provide training in relation to the *Family Violence Protection Act* (2008) and Family Violence Intervention Orders (FVIOs) should revise their publications and training materials with a view to clarifying the relevant jurisprudence. Key issues for consideration include:

- clarification that duration of FVIOs is not a condition for negotiation in Consent Order proposals, but a matter for the court;
- clarification that risk assessment is the primary consideration relevant to submissions and judicial decision-making in relation to duration of FVIOs;
- emphasis on the purpose and goals of the FVPA (distinguishing Consent Orders from other civil orders); and
- clarification that decisions to extend an FVIO, including a FVIO imposed by consent, are based on assessment of ongoing risk, and do not require evidence of breaches of the existing FVIO.

RECOMMENDATION 2: Clarification of the jurisdiction should be reflected in court publications

The Magistrates' Court of Victoria (MCV) should revise information for parties to an FVIO application to highlight the court's role in determining the conditions of proposed orders by consent. This should include the court's obligations to consider the safety of children and to determine an order's duration.

Consent 'without admissions' – amending terminology to reflect FVPA goals

As noted at the outset, the vast majority of FVIOs imposed in Victorian courts are imposed by consent 'without admissions'. This is a mechanism which is designed to ensure that the imposition of an FVIO is not treated as a finding of fact for the purposes of any associated criminal proceedings. The CIJ also heard that it 'sweetened the deal' for respondents who were prepared to 'agree' to the imposition of an FVIO, but who were not prepared to acknowledge that the allegations in an FVIO application were true.

Research participants reported both legal and pragmatic purposes underpinning the prevalence of consent 'without admissions'. Magistrates and Respondent Practitioners, in particular, told the CIJ that removing the 'without admissions' element would result in list 'blow outs', as respondents would be advised to contest matters in order to avoid 'admitting' elements that could go towards a criminal conviction. Participants also suggested that concerns around consequences in the Family Law jurisdiction could have a similar effect.

On a pragmatic note, participants also told the CIJ that the consent 'without admissions' mechanism was a way of avoiding the travails (for both parties) and potential costs (primarily to the respondent) of getting to a finding of fact in relation to the specific allegations contained in FVIO applications.

In the CIJ's research, it was most common for participants to describe 'consent without admissions' as a 'two-edged sword':

> *On the one hand it promotes resolution of matters without going to a contested hearing. On the other hand, it doesn't encourage a respondent to admit behaviour to be more mindful of what they do in the future and to take any action that they need to do to resort to resolve their issues.*
>
> **Magistrate interview, 4 April 2019**

While participants agreed that this mechanism circumvented the process of respondents assuming full accountability for their actions, generally, legal participants suggested that accountability was produced through the *enforcement* of FVIOs, rather than the process by which the order was made. This sat in tension, however, with evidence from the RCFV and in this research that AFMs struggle to have FVIO breaches enforced and that breach matters were not always treated with appropriate gravity.

Further, both AFMs and practitioners working with AFMs reported that many AFMs found the articulation of the order as by consent 'without admissions' as invalidating and unfair. Of concern, Men's Behaviour Change Practitioners also told the CIJ that respondents who had consented without admissions then presented for group-based accountability work with cemented resistance.

In addition, the distinction between FVIOs in the civil context and the implications of their breach in the criminal process, however, is not always well understood by parties and was nominated by respondents as a source of confusion or resentment, or alternatively as proof that they had not actually done anything wrong.

Alternatively, some who spoke English as a second language assumed that they were involved in a criminal matter when they first attended court for an FVIO, even though it was established through the interview that there had not been a criminal charge. The sense that they were pressured to consent to FVIOs by virtue of the 'without admissions' mechanism was also described by respondents, and nominated by lawyers for respondents, as denying them procedural justice (a sense of having participated in a fair process) in some cases.

In some focus groups, particularly with police, there was a sense that, because respondents were not being asked to 'admit' to the specific allegations in an application, they were *merely* agreeing to observe normal standards of acceptable behaviour which anyone else would be expected to observe. This rationale was overtly mobilised to convince respondents to consent to FVIO applications.

By contrast, lawyers who predominantly acted for respondents saw this logic as sitting at odds with the gravity of the criminal consequences if FVIOs are breached, as well as with the legal reality that a FVIO *may* include conditions which exceed the standards of behaviour regulated/ prohibited by the criminal law generally. Concerns around the untested character of allegations against respondents and desires to enact procedural justice were also prominent in Magistrates' reflections on the system.

Extrapolating from the range of perspectives particularly concerned with respondents' experiences, the CIJ suggests that it is contrary to the objectives of the FVPA *and* to the longer term prospects for engagement of respondents if 'without admissions' is used in a way that downplays the significance of the application and to cajole respondents into consenting. Accordingly, while the CIJ acknowledges evidence that Magistrates and lawyers currently deploy the concept of consent 'without admissions' as a way of mitigating risk by reducing respondent resentment and anger, the CIJ suggests that the same goal may be achieved via enacting procedural justice practices in court rooms (discussed at the end of Part 1).

The CIJ therefore proposes that avoiding the terminology 'without admissions' may remove some of the negative consequences for AFMs and respondents which flow from the normal (as opposed to legal) connotations of these words. Though it was suggested to the CIJ that 'unopposed' was a potential alternative, this does not meet the legal goal of being able to make orders without implications for the criminal jurisdiction. Here the CIJ notes that the meaning of 'unopposed' as it currently stands in the legislation is unclear.

The CIJ therefore suggests that 'without admissions' could be made redundant through statutory amendment which overtly addresses the goal of reducing defence lawyer and respondent resistance to 'consenting'. The CIJ suggests that it would be possible to introduce a sub-section to s. 78 which instead specifically provides that an Order made 'by consent' will not be admissible evidence in related criminal proceedings.

In practice the CIJ suggests that the proposed statutory amendment would mean that Magistrates could describe the Order as 'by consent' and explain that the Order would not be 'used as evidence' in any related criminal proceedings.

RECOMMENDATION 3: Replace 'without admissions' with inadmissibility provision

Section 78(1)(b) of the FVPA should be amended to replace 'whether or not the respondent admits to any or all of the particulars of the application' with words which clearly indicate that consenting to an FVIO cannot be used to substantiate related allegations in the criminal law jurisdiction.

RECOMMENDATION 4: Clarification of statutory consent provisions

The FVPA should be amended so that the term 'unopposed' is removed from ss78 and 74(2)(b). Alternatively, the meaning of 'unopposed' should be further clarified in the legislation.

Implications of consent 'without admissions' in the family law context

Section 60CC(3)(k) of the *Family Law Act 1975* (Cth) overtly identifies FV orders as a relevant consideration in the court's assessment of the child's best interests. The CIJ therefore acknowledges that removing 'without admissions' (replaced with a criminal law specific inadmissibility provision, as above) may subtly change the weight afforded to FVIOs in family law decisions.

In response to this potential concern, the CIJ suggests that, while the cross-jurisdictional impact may warrant further focused consideration and/or consultation,[6] it is important not to overstate the likely impact. FVIOs are settled by consent for a range of reasons - including to avoid costs, as respondent and professional participants told us - or where the evidence against the respondent is so great that there is no value in contesting the application.[7]

Perhaps more importantly, these issues are best considered in the context of the over-arching objective of achieving a 'reset' of practice in the FV jurisdiction and intersecting legal practice. Removing 'without admissions' would therefore be consistent with a movement towards placing greater weight on existing FV orders in the family law context, consistent with previous and more recent Australian Law Reform Commission recommendations.[8]

The CIJ therefore proposes that, in addition to recommendations designed to 'firm up' the jurisdiction (above), cross-jurisdictional training will also address the culture of poor practice and inappropriate adversarial practice in family violence matters, attributed widely by participants in this research to family lawyers appearing in FVIO lists.

RECOMMENDATION 5: FVIO training audit and revision for family law practitioners

Victoria Legal Aid (VLA) and the Law Institute of Victoria (LIV) should collaborate to conduct an audit of existing training materials and programs for family lawyers in relation to family violence and the FVIO jurisdiction. This should include the extent to which these materials provide guidance on the purpose of the FVPA and the nature of evidence and decision-making in FVIO applications.

Other intersections between FVIOs and with parenting/ family law considerations

Related to the intersection of the FVIO and family law jurisdictions, the CIJ's findings include that negotiation of parenting agreements at court in connection with Consent Order negotiations were a real concern and should be discontinued in all courts. This stems from AFMs' vulnerability in the absence of independent legal advice from lawyers familiar with the family law jurisdiction.

The CIJ heard that respondents sometimes used parenting agreement negotiations as a form of legal systems abuse, particularly where they were assisted by private family law practitioners.

[6] Considerations relevant in the federal family law jurisdiction, although beyond the brief of this project, could contribute to the current reform agenda foreshadowed by recommendations contained in the recent ALRC report (Australian Law Reform Commission, *Family Law for the Future — an Inquiry into the Family Law System: Final Report,* Series Family Law for the Future — an Inquiry into the Family Law System: Final Report (trans, Australian Government, 2019). These could include guidance for judicial officers in family law matters via training, practice directions and inclusion in the Family Violence Best Practice principles (Family Court of Australia, 2016), and relevant bench books.
[7] Australian Law Reform Commission, *Family Violence: Improving Legal Frameworks: Consultation Paper,* Series Family Violence: Improving Legal Frameworks: Consultation Paper (trans, 2010).
[8] Ibid, and Australian Law Reform Commission, *Family Law for the Future — an Inquiry into the Family Law System: Final Report,* Series Family Law for the Future — an Inquiry into the Family Law System: Final Report (trans, Australian Government, 2019).

The CIJ also heard, however, that it was just as relevant to lack of specialist legal advice and assistance for AFMs.

The CIJ further notes the legislative obligation referred to above for Magistrates to make inquiries about related family law or child protection considerations which the CIJ suggests indicates an imperative for the court to ensure that these considerations inform its decision, rather than allow considerations to be subsumed within a FVIO negotiation.

RECOMMENDATION 6: Parenting agreements not to be negotiated in tandem with FVIO conditions

The MCV should develop a Practice Note which directs legal practitioners and Victoria Police to ensure that parenting plans are not negotiated alongside, or as supplement to, Consent Order negotiations at court.

RECOMMENDATION 7: Cross-jurisdictional competency for FV duty lawyers and Victoria Police

In collaborative efforts between VLA and the Federation of Community Legal Centres (FCLCs), as well as the Victoria Police Family Violence Centre of Learning, duty and police lawyers regularly appearing in FV lists should access training across:

- the jurisprudence and objectives of the FVPA 2008;
- child protection;
- family law; and
- criminal law.[9]

Increased judicial scrutiny of system abuse

Negotiation of parenting agreements is one way in which the CIJ heard that respondents are using tactical approaches in Consent Order negotiations. Participants in the research described an array of tactics, including:

- Perpetrators/predominant aggressors[10] convincing police to bring applications on their behalf, sometimes when the female victim-survivor cannot speak English to explain their experience to attending police;
- Excessive and strategic applications to adjourn matters, drawing out the burden of legal system involvement for AFMs;
- Tactical demands for further and better particulars where applications proceeded to a Directions Hearing;
- Applications to have matters struck out, including at the first return date;
- Making 'retaliatory' allegations against the AFM in the family law context;[11]

[9] A free VLA module called 'Intersections' could be a useful resource: http://learningthelaw.vla.vic.gov.au/Intersections-the-links-between-crime/story_html5.html
[10] 'Predominant aggressor' is a term used to describe the person using a pattern of ongoing family violence, or coercion and control, even where the other party may be identified as having used violence in a single incident.
[11] See also Lesley Laing, Susan Heward-Belle and Cherie Toivonen, 'Practitioner Perspectives on Collaboration across Domestic Violence, Child Protection, and Family Law: Who's Minding the Gap?' (2018) 71(2) (2018/04/03)

- Making allegations against the AFM to Child Protection;
- Lawyers for respondents persuading AFMs to agree to undertakings;
- Lawyers for respondents or respondents negotiating mutual undertakings instead of mutual FVIO applications; and
- Initiating emergency proceedings for a recovery order in the Family Court, at the same time as an FVIO application was being heard in a regional Magistrates' Court.

Some participants also indicated that some respondents extended their victimisation of the AFM through declining legal representation, which meant that they had more opportunity to speak in court; conduct negotiations in person; and control the surrounding environment.

Submissions to the RCFV noted that strategic use of cross-applications, in particular, could be addressed by a requirement that cross-applicants seek leave of the court to apply. To this end, the CIJ heard that careful consideration should be given to situations in which predominant aggressors 'get in first' and the victim-survivor is then positioned as the respondent, including being left to apply for a 'cross-application' for FVIO protection.

During the course of the research, the CIJ heard that police would vacate their original application (where they had brought an application against a victim-survivor) if it became apparent that the original (usually male) AFM was in fact the predominant aggressor. This included situations in which the court had asked the police to make further inquiries.

In recognition of this challenge, the CIJ suggests that a requirement to seek leave should be waived in cases in which police become willing to vacate the original application (meaning that the victim-survivors' application is not actually a 'cross'-application). A leave application is likely to reduce the prevalence of 'strategic' legal advice and lodging of applications.

Further to this, the CIJ notes that increasing awareness of systems abuse is likely to improve Magistrates' and other practitioners' capacity to identify 'strategic' applications. The CIJ saw evidence of strong triage and information sharing work, particularly among police, Registrars and court-based practitioners which enables all system players to be alive to the potential that a cross-application is strategic. This is a good example of all participants working to achieve the safety and protective goals of the FVPA.

RECOMMENDATION 8: Active management of cross applications

The FVPA should be amended to require that a party making a cross-application for an FVIO, including Victoria Police, must first seek leave of the court to apply. This requirement should be waived in cases where police vacate the original application in light of relevant information about the party who requires protection.

Australian Social Work 215 ; Lesley Laing, 'Secondary Victimisation: Domestic Violence Survivors Navigating the Family Law System' (2017) 23(11) *Violence Against Women* 1314

RECOMMENDATION 9: Practice Direction to address abuse of legal process
The MCV should consider issuing a Practice Direction concerning FVIO negotiations which includes provisions to:

(a) prohibit the use of undertakings where Affected Family Members (AFMs) are not legally represented;

(b) prohibit the resolution of cross applications by consent in the absence of legal representation of both parties, as well as in the absence of serious inquiry by the presiding Magistrate.

Addressing overly adversarial legal practice

More broadly, the CIJ heard that proactive management was required to address abuse of legal processes, both by predominant aggressors and their legal representatives. Participants in the research described scenarios in which adversarial legal practice appears to have 'tipped over' into unethical legal practice. Some practitioners who primarily supported AFMs related stories of discovering an AFM in the court foyer or corridors being told by the respondent's private lawyer that an undertaking was the same as an FVIO.[12] Similarly they related stories of AFMs with no duty lawyer assistance being pressured by private lawyers to agree to a parenting plan, as noted in the section above.

Some lawyers who appeared predominantly for respondents told the CIJ that they had background experience acting for AFMs and this appeared to be a crucial way in which these lawyers were able to appreciate risk and safety issues central to the FV jurisdiction. Here the CIJ notes that both CLCs and VLA are able to provide legal advice and assistance to AFMs, though there are current limitations on VLA's eligibility criteria.

This highlights the value of the VLA Client Safety Framework, as well as VLA's proposal to develop and pilot a family violence Practice Leaders training program to improve the skills of duty lawyers appearing in FV Lists. The research findings, however, indicated that the practice of some VLA lawyers providing duty lawyer services to respondents was not always founded on the Client Safety Framework, indicating a need for greater training and awareness of this resource.

More broadly, the CIJ heard that legal professional conduct rules should be amended to centre the objectives of the FVPA and to mitigate overly adversarial conduct. This specific proposal warrants consultation with legal practitioners and Magistrates, as well as the Law Institute of Victoria and Department of Justice & Community Safety. This consultation can then support relevant reform to the Legal Profession Uniform Rules which are applicable in Victoria.

Seear and Batagol suggest that a relevant Professional Conduct Rule should include a high-level obligation on lawyers acting in matters involving FV to 'consider the impact of their actions upon the physical and psychological safety of other parties and witnesses to the matter.'[13] The CIJ further suggests that VLA's Client Safety Framework may offer additional guidance.

[12] Undertakings are 'agreements' between the parties. Unlike FVIOs imposed by consent, the applicant to an FVIO must agree to the issue being 'resolved' by undertaking and, as the majority of FVIO applications are now led by police, undertakings are therefore more likely in the context of 'in person' applications. The breach of an undertaking does not result in criminal consequences.
[13] Becky Batagol and Kate Seear, *Negotiating Family Violence: The Need for Reforms to Ethics, Communities of Practice and Legal Education,* Series Negotiating Family Violence: The Need for Reforms to Ethics, Communities of Practice and Legal Education (trans, 2019).

RECOMMENDATION 10: Policies to centre risk and safety in duty lawyer services

Lawyers providing duty lawyer services for AFMs and respondents, as well as ongoing casework in family violence matters, should develop practice policies which centre risk and safety considerations in their work. This should build on VLA's Client Safety Framework.

RECOMMENDATION 11: Development of a new FV legal conduct rule

Professional Conduct Rules should include an additional rule designed to address safety and risk in proceedings concerning allegations of family violence. This rule should be designed to mitigate overly adversarial conduct in FVIO proceedings.

Promotion of safety through procedural justice

While the CIJ heard that the avoidance of overly adversarial practices was essential to avoid causing further harm to AFMs, the CIJ also heard how important it was for respondents to feel heard and that they had participated in a fair process.

The relevance of the way in which respondents experience the FVIO process, including Magistrate engagement with respondents, is evidenced through an existing body of literature in relation to procedural justice. This literature recognises that, if the legal system instils a sense of unfair treatment in perpetrators of FV (and offenders more broadly), this will reduce the likelihood of their compliance with legal mechanisms, which are ultimately the tools which the legal system uses to keep victim-survivors of FV safe. Conversely, the CIJ heard and observed situations in which an exchange with AFMs in the courtroom could inadvertently decrease their feelings of safety and increase respondents' control.

Overall, this requires judicial understanding of the way in which exchanges in the courtroom can address or, alternatively, *escalate* risk. In discussing Magistrate practices, the CIJ wants to emphasise that multiple decisions and a wide range of skills need to be deployed in any matter heard by a court and that this is a complex and expert task which is also the remit of an independent judiciary.

The CIJ is also acutely aware that training for the judiciary is a difficult and complex task and acknowledges that some Magistrates have participated in training in relation to motivational interviewing in the past. Until the rollout of specialist courts across Victoria, however – and even once the rollout is in place – awareness of family violence dynamics and associated risks does not necessarily equate with a capacity to deliver procedural justice. This means that certain aspects of current judicial practice which exhibit procedural justice should be actively encouraged. This could include peer observation amongst Magistrates, as well as the production of videos or written guides.

RECOMMENDATION 12: Procedural justice objectives

The Judicial College of Victoria should facilitate the delivery of further and ongoing training and materials to support the conduct of FVIO hearings in a manner which is consistent with the objectives of procedural justice (in addition to the statutory objectives of safety and accountability).

Plain language and FVIO parties' understanding of the system

Though a relatively small number as a proportion of the overall participants, all AFM participants in the research were from Culturally and Linguistically Diverse (CALD) backgrounds. These participants and the multiple professionals who provided support to AFMs and who were engaged in the research told the CIJ that the phrase 'intervention order' was a barrier to understanding the nature and purpose of the order. The majority of the participating AFMs, including those who spoke English as a first language, also evidenced ongoing confusion around the terminology and different kinds of orders.

AFMs and practitioners whose work involved supporting AFMs told the CIJ that calling orders 'Protection Orders' or 'Family Violence Protection Orders' and calling AFMs 'protected family members' would help to convey the purpose of the Orders to all FVIO parties immediately. The CIJ acknowledges that changing this terminology would require additional resourcing and a long lead time for full implementation. The CIJ also acknowledges that the use of the term 'protection orders' in isolation from reference to family violence may be confused with orders in the child protection jurisdiction. Accordingly, reference to family violence should be maintained.

RECOMMENDATION 13: 'Family Violence Protection Orders'

The FVPA should be amended to replace the term Family Violence Intervention Orders with 'Family Violence Protection Order' (FVPO). The term 'Affected Family Member' should be replaced with 'Protected Family Member' ('PFM').

Further, multiple practitioners criticised a widespread practice (observed by CIJ researchers in most court rooms and reported in focus group discussions) of using sector words and 'shorthand' that were confusing to court users. This included referring to conditions by number or describing orders as 'limited' or 'full', rather than the more explanatory terms 'safe contact' and 'no contact' orders. To clarify, these are not legal terms, but 'shorthand' familiar primarily to practitioners. In other examples, legal terms were used where plain language could easily suffice and would have helped the parties to understand the proceedings.

RECOMMENDATION 14: Plain language at court

The Chief Magistrate or MCV Family Violence Portfolio Group should consider developing a Practice Note regarding plain language in the court room. This could include work to identify terms frequently used, such as replacing references to 'duty lawyer' with 'free lawyer'.

RECOMMENDATION 15: Discourage use of 'short hand' or legalistic phrases

The existing plain language guide developed by MCV should discourage the use of legal phrases and should then be disseminated to all court-employed staff with a view to fostering a common (plain) language.

Conclusion to Part 1

Despite strong reform and increased family violence expertise among the majority of practitioners giving rise to many examples of excellent practice observed by the CIJ in this research, the CIJ suggests that the problem of overwhelming caseloads and list size are inhibiting the system's capacity to identify and challenge examples of poor practice when these occur. Unfortunately these 'rogue' pockets of practice, or even individual practitioners in some cases, do undermine the jurisdiction and can significantly impact on court users' experiences.

Court observation and focus group discussions with practitioners also suggested significant variation in practice *and* in conceptualisation of the jurisprudence among Magistrates. The inconsistency of FVIO-related practice across courts and police regions was also a key issue raised in RCFV submissions.[14]

Accordingly, the CIJ's observations and recommendations in Part 1 of this report are designed to refocus the attention of all players in the FVIO system on the objectives of the FVPA. The CIJ suggests that Magistrates are well placed to lead ongoing practice improvement, actively focusing all practitioners on safety goals. At courts with strong specialist FV Magistrate leadership, the CIJ saw the way in which Magistrates were able to shape and check Registry practices and drive improved duty and police lawyer practices as well.

Realisation of FVPA goals of safety and accountability requires lawyers, Magistrates and other practitioners to keep the rest of the system in view. In other words, FVIOs are not ends in and of themselves and can only be genuinely protective where they mesh with an effective and integrated system. This research highlights scenarios in which improving practice in one element of the system has been let down by other elements.

Equally, however, relatively small changes at multiple junctures in the system also have the potential to result in much larger, coordinated improvements across the system as a whole. The next section of the CIJ's report now moves to additional recommendations related to process, including a proposal for more substantial reform which can focus attention on earlier engagement and support for parties, thereby reducing the burden on the court system down the track.

[14] With respect to inconsistent police practice see in particular: Victoria, 'Witness Statement of Helen Louise Matthews' (2015) <http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Statements/WIT-0110-001-0001-Matthews-15.pdf>.

Part 2: Safe, supported, standardised and streamed FVIOs

Part 2 of this report responds to what research participants identified and the CIJ observed to be a combination of overwhelming demand and a somewhat rushed, 'one size fits all', approach to the imposition of FVIOs. Without exception, research participants described struggling to cope with the volume of FVIO applications. Many suggested that, even when professionals did an excellent job, the system really required a further two or three additional workers performing exactly the same role for it to respond to demand in an adequate way.

Participants across the research also reported that AFMs and respondents were often attending court having received very little support or advice, with this particularly the case in relation to legal advice. In the aftermath of relatively recent police intervention and crisis, this meant that few parties were in a position to make decisions or understand the content or implications of FVIOs.

Further to this, all elements of this project - particularly input from respondent and AFM participants, as well as court observation by the CIJ - highlighted the diversity of family violence scenarios. In addition to the majority cohort of adult, intimate partner violence perpetrated by men against their female partners, scenarios described and witnessed also included:

- intimate relationship breakdowns between teenage parties, who were accompanied at court by parents and friends of both the parties;
- parties in same sex relationships;
- conflicts between extended families in a variety of configurations - often involving multiple applications and cross-applications; and
- one case in which both parties were over 80 years old.

The CIJ acknowledges that all Victorian courts are working hard in the face of unprecedented demand, with the majority maintaining a firm focus on safety. Despite the different circumstances and needs of service users, however, professional and service user participants told the CIJ that the majority of FVIOs made by consent are still imposed with little tailoring of conditions and, in the case of Final Orders, for a default period of 12 months.

In the region identified by the CIJ as struggling most to implement a safety-centred family violence jurisdiction, lawyers for AFMs described the absence of differentiated responses as a symptom of the FVIO system not reaching this objective. These same demand pressures applied where the CIJ saw and heard about evidence of much stronger risk-focused and nuanced practice. In these courts, however, practitioners worked in integrated ways to support service users and focus on safety, including:

- greater capacity to assist parties to understand the legal process and possible outcomes (for example through mutually reinforcing messaging from a range of actors including Registrars, support practitioners, Magistrates and Court Network);
- negotiation back and forth and involving informed AFMs and respondents to finesse FVIO conditions that reflected service users and their families' needs;
- connecting respondents and AFMs with relevant support services; and
- appropriate judicial oversight to test Consent Order proposals and to engage AFMs and respondents appropriately in the court room where parties were present.

Finally, service user and professional participants, including Magistrates, also reflected on the poor fit between the legal goal of a FVIO order on the one hand and service user needs on the other – needs that were often left unaddressed and which then contributed to lack of safety and ongoing risk. Key issues unaddressed or even exacerbated by imposition of a FVIO included homelessness, poverty, drug and alcohol issues, mental health issues and, in particular, the sense from respondents of being victimised by 'the system'.

In Part 2, a key proposal flowing from this research is therefore the **adoption of standardised and *streamed* trajectories for applications involving**: (1) an immediate court appearance stream; (2) pre-court support stream and (3) assisted shuttle negotiation stream. Access to each stream would be via a triage and risk assessment intake.[15]

Accordingly, the model proposed by the CIJ has two key goals:

- to respond to service user diversity and needs by providing multiple service user pathways to interventions critical to a safe and supported process; *and*

- to alleviate the demand pressures on courts which are currently working against existing systems' and practitioners' capacity to perform to their full potential.

This proposal will strengthen existing efforts by providing the levers across all courts to deploy a streamed response which has an eye on risk and safety built in to how the court and the surrounding systems respond to each party seeking its protection.

Recommendations which would improve the experience for parties in the *existing* process follow this proposal in Part 3. These include increased and early access to services but, particularly, to expert and ongoing legal advice. This includes legal advice for AFMs, even where the FVIO application has been led by police. It also includes legal advice for respondents, with a related need being for a greater awareness and focus on the impact which interactions with Victoria Police at court might have on respondents' capacity or willingness to comply with the conditions of FVIOs. Part 3 also identifies a range of other targeted improvements to the way in which interactions in the court environment may contribute to the FVPA's objectives.

Proposal for a streamed response to FVIOs

This section outlines the CIJ's proposal for a streamed and standardised response to FVIOs which attempts to address some of the concerns heard and observed in the project regarding 'one-size-fits-all' approaches. In particular, participants indicated that the majority of police applications are listed at court within two to three days of first contact between police and AFMs.

> *[The application was at court]…within three days. Yep pretty quick, three days and I think I was in court for the first time ever in my life. And it was just a whole bunch of scary stuff.*
>
> **AFM interview, 6 June 2019**

This is likely to be the result of many applications being initiated via a FVSN which means that, with the respondent excluded from the home, a swift return date is required (s 31 FVPA). In other cases, it is likely that the system seeks to obtain the protection of an interim order at the earliest possible date.

[15] The proposal is quite distinct from triaging of listed court matters which would occur at Daily Coordination Meetings in the SFVC environment, or which are occurring already (in some cases more informally) across all MCV courts.

Despite the protective logic of rapid court engagement, submissions to the RCFV and many participants in this project, including AFMs, have suggested that the current timeframe of most FVIO listings is too rushed. These participants explained that current timeframes propel both AFMs and respondents into engaging with difficult legal concepts and decisions about the future, often in the immediate aftermath of a violent incident and major life upheaval.

For example, Newman's statement to the RCFV argued that AFMs would be better served by an initial 'return date' that served as an opportunity to engage with support services and legal advice, with an actual application for FVIO set down for a subsequent date.[16] She argued:

> [In the immediate aftermath of a family violence incident] women are just not ready to make life changing legal decisions…and are often poorly informed. These decisions are emotionally driven [and made] by women who are trying to balance, fear, sadness, guilt, responsibility, family pressures, shame and love. We are then asking them to cope with their emotions and understand a legal process and their legal options within an extremely short time frame. This is often in the presence of the perpetrator. They then need to make decisions that will affect the rest of their lives and their children's lives.[17]

Service user participants spoke about things happening very quickly and feeling dazed and unclear about the police application process. Magistrates shared these concerns:

> *I said to the police, 'is there any reason why you think you should list these matters so immediately? ...The police just said, 'look we're just churning basically. We get the next one, we just whack it into court.'...the unholy timeframe is not working [very often] for both respondents and AFMs.*
>
> **Magistrate interview, 1 April 2019**

Rather than a return date (the first date when an application is heard in court) very close to the initial incident, professional participants who worked closely with service users argued that more time is needed for increased access to legal advice, risk assessment and safety planning. These participants across the spectrum also endorsed a 'delayed' FVIO return date, indicating a number of ways in which the system is currently impacted by rapid return dates in the absence of pre-court engagement.

These impacts included the fact that matters are often adjourned at first return with fairly standardised conditions in an assumption that parties are not in a position to consider their circumstances fully:

> *We will often adjourn to the next mention date…just so that the situation sort of clears a bit and everyone's got time to think."*
>
> **Police focus group, 27 March 2019**

Rapid return dates in the absence of pre-court engagement also meant that parties with intersecting legal issues often struggled to come to agreement without prior advice.

[16] Victoria. (2015b) Witness Statement of Abbey Cara Newman. WIT.0073.001.0001 *Royal Commission into Family Violence.*
[17] Ibid.

> *It's always going to run smoother if people know what they're doing ... there's also then not so much pressure on the parties to come up with something that looks reasonable on a day that only has five hearing hours in it.*
>
> **Court focus group, 24 April 2019**

Impacts similarly included the reality that parties struggled to take in legal information within this rapid turnaround without pre-court engagement – in turn taking up significant court time when matters had to be stood down for further legal advice and clarification:

> *I had a good 15, 20 minute conversation with a guy yesterday and he said all the right things. He was like yep, it's fine. I'm agreeing, it's no problem,...Literally I got into court and he said "I think I need some legal advice"...I think…he was just overwhelmed by the whole process ...for some people this is the first time they've been to court or been through this… it's just an overload of information.*
>
> **Police focus group, 27 March 2019**

Parties experiencing this rapid turnaround also saw the legal process as a 'whirlwind' and were unlikely to understand the outcomes or significance of the Order made:

> *I sometimes wonder whether it would be better for people to actually have the legal advice before the court date, because it gives them time to process it…Rather than, in that half an hour, we're condensing it. We give them so much verbal vomit of all the information, all the different options, all the different scenarios you can think of at that point in time. And then you go, "Quick. Decide. Got five minutes." I just think that most parties don't even understand the process and they don't understand the orders made and they don't know what they consented to and they don't know if they're supposed to go to mediation, what that even means, or what service they're meant to ring, it's almost like a theatre that happens between the legal people, it's got nothing to do with them.*
>
> **Legal focus group, 26 March 2019**

Support practitioners for CALD AFMs particularly reflected on their clients' needs for additional time to understand the process and be ready to negotiate FVIO conditions:

> *...Yeah, so I have feeling it doesn't really have to happen so quickly. Maybe, also sometimes woman [sic] can offer that choice of having to postpone court for a week until she actually gets all the information that she needs. Even for the perpetrator, maybe, they will not be contesting sometimes, if they had that legal advice. No, just because there is a child's name doesn't mean that you can't legally ask to have access, let's say, it's just an example. But just to have maybe, more time to get proper information.*
>
> **Specialist FV service focus group, 18 December 2018**

In addition, Magistrates reflected on the benefits of delayed finalisation and engagement with support services:

> *[…] once there's an order in place [interim, ex parte], there should not be an obscene rush to get a consent without admissions [final] order in place. We shouldn't be trying to resolve everything on the first date. Because respondents have often recently been excluded from their homes and their accommodation hasn't settled down yet. There's been a huge crisis…and everybody's all over the place…If we think about relationship breakdowns when there's no violence, people take time…So, why would we expect that when there is violence the timeframe will be much shorter…?*
>
> **Magistrate interview, 1 April 2019**

> *Sometimes people might come to you with a final agreement for a safe contact order, but …you can't be satisfied particularly in relation to the risks that are there…so [you may indicate] that you're not going to finalise the matter on that basis, given the sworn application in support…and the requirements of the Act for the safety…and that you'll make an interim order, and that might take you for a short or a long term, depending on how much time you want the dust to settle, and for some safety planning to be done and some supports to be put in place, and that for the service system to actually start doing its work after a crisis that's happened...*
>
> **Magistrate interview, 28 March 2019**

Research participants also indicated the need for interim stages to reduce risks associated with respondents' heightened state in the aftermath of a family violence incident:

> *Another thing, that…could make things safer, is the delay of the [court] day. So, having somebody who's already heightened, who hasn't slept for two days because they've been kicked out of their house by the police…they don't have their things. They haven't showered…They're at risk of losing their whole family…And then, you've got them sitting in a court room, unpleasant, until 4:30 before their matter can even get on…Sometimes waiting for an interpreter, so they haven't even been able to speak to anybody… obviously, the onus is on that person not to do anything. But it's a huge safety risk, because you're heightening them…sitting there, stewing in that anxiety.*
>
> **Legal focus group, 19 February 2019**

> *Some people are really traumatised on that first day, so it's a hard day to accept* anything*, really. Let alone responsibility for your behaviour.*
>
> **Legal focus group, 19 February 2019**

Despite the 'slowing down' of the legal process advocated in this model, the CIJ stresses that the end result should be *fewer* adjournments and court attendances required of service users. As one AFM observed in terms of her overall feedback on the system:

> *[The duration of the order] should be longer and it should be easy. This process is hard. The courts are busy, very long waiting time, and they give the hearing dates for 3 months later. This…is disappointing. The process should be fast if someone is not feeling safe.*
>
> **AFM interview, 11 May 2019**

In summary, the CIJ suggests that the tensions and concerns associated with court dates in the immediate aftermath of reported family violence incidents would ideally be addressed directly by pre-court triage and service engagement. In addition, the pre-engagement measures outlined in this report will complement extended judicial management of matters by providing ongoing casework and therapeutic support to address risk. This includes tracking and managing dynamic, and acute dynamic, risks.

Triaging differentiated responses

At the outset, the CIJ notes that references to triage in this scenario do not refer to the Daily Coordination Meetings at specialist courts or occurring informally at other courts**.**

> *People love the word 'triage', but what does it mean? It means actually understanding a dynamic risk at a point in time. And timing is really important…when somebody says 'I want to make an application', [whether it's a police application or self-initiated]…every door needs to be opened to the right response. So if the door that you're coming through is the court, then when we [have to] get it, we need to be able to promptly, effectively identify where that person's risk is at that point in time, in terms of that dynamic picture. And then we need to be able to tailor a response to it.*
>
> **Magistrate Interview, 28 March 2019**

The CIJ acknowledges that an effective streaming process could only operate on the basis of experienced staff making robust assessments about the nature and level of risk involved in each individual matter, and the extent to which parties have had access to relevant support services. The CIJ further acknowledges that the new MARAM and other RCFV related reforms will contribute significantly to this process.[18]

Once allocated to a particular stream, matters could be re-allocated, but only into a higher-risk stream. The benefit of the 'low to high' one-way referral stream is to safeguard vulnerable AFMs and to ensure that they remain in streams with more direct access to the support services which participants in this research, as well as the RCFV more broadly, indicated was a critical element of safety.

In the CIJ's view 'streaming' decisions could be made by existing 'first responder' agencies - Registrars for self-initiating applicants, or local Family Violence Liaison officers in the case of police applications. Alternatively, the CIJ suggests that an external FV practitioner, for example located at an Orange Door site, could liaise with Registrars and police applicants so as to stream applications.

[18] The CIJ notes that the risk assessment tools in the revised L17 addresses and will potentially address this issue noted by police participants.

Benefits may include a cross-checking function on risk assessment, as well as immediate links with potential service providers connected with Orange Doors, including those doing in-reach into or legal clinics at the Orange Door or specialist family violence services. The CIJ recommends that any professional asked to perform initial risk assessment and make streaming decisions should have significant experience and expertise in relation to family violence and has been trained in the comprehensive MARAM risk assessment.

The CIJ proposes that the streamed response system involve a classification of matters in relation to risk that is then shared with legal and support practitioners managing cases. The flagging of a case risk level should follow the case across 'streamed' responses and should involve a risk assessment tool based on the MARAM, as is Victoria Police's recently developed L17 actuarial risk assessment tool.[19] In addition, the CIJ proposes that social work practitioners or other practitioners identified as appropriate should have capacity and a formal obligation to identify and recurrently assess dynamic risk.[20]

Court management considerations

Courts are arguably best placed to act as a central coordinating 'hub', although it is suggested that stream 2 and 3 responses, described below, may be best delivered in alternative locations, for example pre-engagement services would be likely to be best delivered on site at service provider organisations (or in outreach capacity) as most courts are unlikely to have facilities and space available to conduct shuttle negotiations on-site.

Drawing on professional participants' descriptions of existing FVIO file management strategies which improve Magistrate capacity for judicial oversight, the CIJ suggests that streamed files could be managed in ways that provide easy and rapid summaries of case progression through the system. For example:

- The status and progress of FVIO applications should be recorded on a court form and checklist attached to the front of every application's court file.
- Different streams could be associated with different folder or form colours.

Overall, the goal should be **differentiation and immediate capacity to identify the progress and assessed risk status of applications**. An equivalent system could be applied to the Court's online file management. Here the CIJ notes the value of current considerations by the MCV to use online applications and the MCV Contact Centre to prompt referrals to legal advice and support services, as well as to prompt court users of hearing dates and other important information. The CIJ is aware that a combination of these options are in development and strongly suggests that they be further explored.

Stream 1: court appearance stream

Stream 1 would operate largely in the same way as the current process and would be reserved for those matters (a) requiring an order to be made by a Magistrate and (b) where the appropriate level of information, support and advice had been provided to the parties.
The following types of matters would be allocated to Stream 1:

a) **'Interim order matter':** applications for an interim order (ex-parte or via consent), required to 'cover' a period of service engagement (Stream 2). This includes in relation to FVSN matters which are brought to court within a very short timeframe where respondents are excluded from the home and do not have access to housing.

[19] Victoria Police. (2019) State wide implementation of the Family Violence Report: Informing referral agencies and government stakeholders about changes to the Victoria Police response to family violence.
[20] The CIJ acknowledges that VLA and CLCs are not MARAM framework organisations but that lawyers may still use a risk assessment tool developed with reference to the framework.

Matters would immediately transition from this stream into the pre-court support stream (further exploration of this stream is below). Adjournment periods would be for an estimated period of engagement with capacity for the matter to return as a (b) 'Supported Application' for further interim order;

b) **'Supported application matters':** matters in which AFMs have already been linked with appropriate FV casework supports and legal information about the FVIO process (via self or police referrals) prior to attending court *and* in which legal service and casework support outreach has been received by the respondent. While matters 'returned' from Stream 2 are likely to be well-placed to obtain a Final Order, the CIJ acknowledges that Magistrates play an important role in hearing updated circumstances and may determine that a further Interim Order would be appropriate;

c) **'Court supported application matters':** matters where parties have obtained legal advice and seen Respondent and Applicant Practitioners (ideally ahead of the actual court date). Both practitioners must indicate that the parties do not require further engagement or support (this could be achieved through a *pro forma* certification that practitioners provide for the court file). This is likely to involve a continuation of a type (a) matter and/or a legal and support appointment booking system administered by FV Registrars for parties to engage, either on return dates or ahead of return dates, with court-based practitioners.[21]

In relation to (b) type, 'Supported Application' matters, the CIJ suggests that Family Violence Registrars are best placed to verify provided evidence of pre-court engagement. This should not impose onerous bureaucratic burdens, but could take the form of written communications from support practitioners or police, or even on-site calls by the Registrar. Alternatively, MCV may simply ask parties to explain details of their pre-court assistance and require no 'proof'.

In (b) and (c)-type, 'Supported' and 'Court-supported' Applications, the CIJ suggests that Magistrates will play a critical role exercising judicial inquiry and discretion to determine whether any proposed Consent Orders should be resolved on a final basis, or alternatively made on an interim basis. This would be to facilitate judicial monitoring of compliance, as well as engagement with support services.

Stream 2: Pre-Court Support Stream

This stream is designed to address issues described in the RCFV and by participants in this research around parties' limited capacity to understand information at court in the immediate aftermath of a reported family violence incident. Stream 2 matters include:

- Matters in which a FVSN has been imposed by police and where the 14 day duration of this notice (if the respondent has housing) allows time to connect parties with appropriate supports and information, which the CIJ understands was one of the original intentions behind the extension of FVSNs to 14 days;

- Court Appearance Stream 'Interim Order' matters (stream 1a) transitioned to this 'stream' following an interim order (this includes FVSN matters that proceeded directly to court due to the absence of housing for the respondent).

AFM pre-court engagement

Within 48 hours of a police-attended incident or AFM attendance at station or court, Victoria Police or Registrars should refer AFMs to a specialist family violence support service. This period should incorporate engagements prompted by the existing L17 process, as well as additional engagement with legal advice and assistance. As such, this referral should enable:

[21] Stakeholders have suggested that the mooted booking system could link to VLA's Orbit tool.

- Risk assessment;
- Safety planning;
- Identification of co-occurring issues. Eg. AOD counselling;
- Independent legal advice about FVIO system and any intersecting matters;
- Basic child protection and family law advice and/or follow up appointment made.

Ideally this work would be performed and/or brokered by a specialist role/s in a single location or on an outreach basis. A similar service is currently provided, of course, by some specialist family violence services in response to the L17 notification. A key element of the proposed system that is currently missing, however, is a 'hardwired' opportunity to access legal information and advice from qualified and independent lawyers. Further discussion around expansion and funding of legal services for FVIO parties is developed in Part 2B and in the full report that outlines the original research conducted for this project.

The Orange Door could potentially assist AFMs by referring them to access legal information and advice, depending on the local constellation of services at the relevant Orange Door. Participants in this research identified CALD, male and LBGTIQ AFMs (and respondents) as particularly poorly served in the current system. The CIJ suggests that system capacity to refer AFMs (and respondents) to culturally or otherwise more appropriate specialist services may be a significant advantage of the pre-court triage and streaming model. The CIJ also notes however that L17s for male victims are not currently received by the Orange Door (these come through the Victims of Crime Helpline).

Respondent pre-court engagement

The CIJ recommends a **more expanded service engagement response than the current L17-triggered process.** Respondents to a FVSN should be contacted by the relevant court within 48 hours of a police-attended incident or AFM application for an FVIO; be provided with basic advice around the FVIO system; and have their situation triaged by a case worker (see discussion in relation to service provider options below). The same time frame should apply in the case of an interim order being imposed.

This recommendation builds on, and extends, research from Western Australia which recommended that respondents be contacted after their appearance at court to provide them with information about the relevant protection order and assess their ongoing level of risk.[22] Functioning *prior* to court attendance, however, the CIJ recommends that this contact should identify co-occurring issues, such as housing, and enable referral to appropriate supports. This work would need to be a family violence specialist role to balance needs for procedural justice and engagement with risks around collusion.

In contrast to the current system in which the L17 notification triggers a phone call or text message contact from assertive outreach services connected with the local Orange Door (where relevant) and/or NTV, which effectively operates as an *invitation* for the perpetrator to initiate contact and take steps to engage, the FVIO-triggered process should operate on an assertive engagement and/or outreach-basis.

[22] Donna Chung, Damian Green, Gary Smith and Nicole Leggett. (2014) Breaching safety: Improving the effectiveness of Violence Restraining Orders for victims of family and domestic violence. Curtin University, Communicare, Western Australian Department for Child Protection and Family Support.

Recent research conducted by the CIJ into effective systems for perpetrator interventions highlighted improved response and engagement rates where MBCP-provider organisations also provided casework support addressing respondents' needs including housing referrals, material aid and referrals for support in relation to alcohol or drug and/or mental health issues.[23]

Accordingly, the CIJ suggests that, unlike the Court Mandated Counselling Order Program, social or caseworker outreach to respondents prior to court attendance needs to be more clearly badged as 'case management', acknowledging the significant issues that frequently correlate with respondents' uses of violence and that may flow from the FVIO process itself, including being excluded from the home.

Finally, the CIJ also suggests that it may be possible to leverage authority associated with the court process further by framing engagement with pre-court legal services in terms of respondent capacity to be informed about the process and participate fully.

The proposed process should be triggered by the L17 in FVSN matters (replacing or expanding the current L17 response). In Interim Order matters, the CIJ suggests that Registrars or Respondent Practitioners may be best placed to trigger the support response. If the process is understood as proactive, constructive and designed to address the immediate needs of respondents (such as food, or shelter) then respondents will also be better placed to connect with additional elements of system engagement. These include opportunities to commit to steps that will immediately reduce the AFM's risk *and* keep the respondent in view of the system.

Current perpetrator interventions are not adequately staffed or resourced to provide the service described here. When invited to contemplate aspects of the model articulated in this Part of the report, one Registrar reflected on the absence of potential services for respondents in the court's area:

> *There's no services for respondents here…So arguably, there's a problem there. The people who are employed by [specialist FV organisation]…it's hard to get your head around providing a service, I think, to men, when your full design is around providing them to women. I don't believe that an agency is able to do both. I think there should be two agencies, that's my personal view.*
>
> **Court focus group, 24 April 2019**

This same Registrar also reflected on the importance of avoiding a one size fits all response for respondents, reflecting on his experience of respondents refusing to consent to orders in a court with a capacity to mandate men to MBCP participation; or consenting, but then resenting and refusing to engage with the intended intervention. The CIJ acknowledges these significant resourcing implications but also notes that this is a gap in service provision that is increasingly identified across the system, including by practitioners working primarily in family violence services which are focused on victim-survivors.

First return date

After a period of service engagement (within expiration of FVSN in those cases), Pre-Court Support Stream matters should flow back into the court appearance stream as 'Supported Applications'. The importance of AFMs' attendance at court would then be diminished by the prior off-site provision of services, including legal assistance. Practitioners working with respondents should make every effort, however, to have the respondent attend. Higher risk respondents should be directed to attend an appointment with the Respondent Practitioner, as is current practice in many locations. This would function as a further opportunity to be engaged toward improved safety and reduced risk.

[23] Donna Chung, Karen Upton-Davis, Reine Cordier, Elena Campbell, Tim Wong, Michael Salter, ….Tallace Bissett. (2020) *Improved accountability: the role of perpetrator intervention systems.* (Research Report 20/2020) Sydney: ANROWS

The CIJ anticipates that parties' prior access to support, information and advice will result in a majority of matters in this stream proceeding to resolve by consent (rather than ex-parte) and with minimal adjournments. In cases that do not resolve on the first court return date, these will proceed in the existing way in which a contested matter proceeds. Both parties should be able to remain engaged with supports that were initiated at the first stage, minimising the impacts of multiple return dates. Appropriately funded legal representation for self-initiating applicants will also alleviate the requirement for AFMs to attend court dates.

Noting developments in relation to an online FVIO application system, the CIJ suggests that police lawyers and/or support practitioners could use the online application system to file and/or add details to an application ahead of the first return date. Police lawyers or Family Violence Registrars should also follow up with respect to conditions sought *after* support services and independent legal advice have been received by parties.

Stream 3: Assisted shuttle negotiation stream:

This stream would be appropriate for lower-risk applications, responding to significant evidence from professional participants in this research who suggested that some of the most time-consuming matters in the FVIO lists involved matters which were lower risk but which involved complex intersecting issues, both legal and non-legal.

The projected outcomes from the shuttle negotiation stream include:

- Identification and resolution of issues related to disputes which may be more appropriately resolved outside the FVIO process, such as low risk matters involving property disputes between extended family;
- Identification of key issues informing negotiation of proposed FVIO conditions, prompting a referral back into stream 1(b) or (c);
- Identification of intersecting parenting issues and negotiation of a parenting agreement, though only where assessed as safe and appropriate.

The CIJ suggests that, while there may not be a large volume of matters triaged as suitable for this stream, many negotiation stream matters *are* likely to be among the most complex and time-intensive matters currently managed at court.

The proposed model would require two separate rooms and a specialist family violence trained mediator/negotiator to conduct the shuttle negotiation. The CIJ recommends that parties be legally assisted, in light of Field and Lynch's evaluation of an AIFS pilot of mediation in the family law context, which found that the presence of lawyers contributed to safe and effective practice of mediation in situations of family violence.[24] Given infrastructure limitations at most courts, it would be appropriate to investigate whether these negotiations could be facilitated off-site.

This model draws on elements of the FVIO shuttle mediation process currently used in the ACT, as well as on Batagol and Field's work in relation to a model for mediation in the context of family violence, as described in the CIJ's interim reports and literature review for this project.

The CIJ does not suggest that the ACT model should be adopted wholesale. In particular, the CIJ suggests that negotiation and resolution of an FVIO by consent should *not* be the sole – or, in some cases, even primary - purpose of the negotiation.

[24] Ibid; Rachael Field & Angela Lynch, 'Hearing parties' voices in Coordinated Family Dispute Resolution (CFDR), An Australian pilot of a family mediation model designed for matters involving a history of domestic violence' *Journal of Social Welfare and Family Law*, 36:4 392-402.

Rather, the CIJ suggests that the goals of negotiations should be informed by the needs and priorities of parties ascertained via the initial triage and intake process. Further, the CIJ's proposal clearly indicates that assessment of suitability for legally assisted negotiation, based primarily on safety and risk, should occur prior to matters entering that stream.

Efficacy and safety would rely on adequate risk assessment processes (see above re triage and streaming mechanism) and the CIJ suggests that movement within the 'streams' should only flow *to* streams 1 and 2, ensuring that vulnerable AFMs remain in streams with more direct access to the support services which service user and professional participants in this research indicated were critical to AFM safety.

Whereas the CIJ notes that the ACT model (one of the only examples of 'mediation' currently deployed in a family violence context and described in more detail in the CIJ's full report) is generally not considered appropriate for complex, intra-family conflict situations,[25] this is one of the scenarios which the CIJ suggests would actually be best managed through shuttle negotiation/mediation.

A range of practitioners told the CIJ that cross-applications which were not necessarily examples of legal systems abuse were more common in circumstances involving extended family disputes, including multiple members of the family named on multiple applications for multiple AFMs and naming multiple respondents.

These matters were identified as complex, often requiring significant numbers of legal practitioners to appear on behalf of the many parties and likely to involve extensive, back and forth negotiations. Importantly, practitioners also suggested that AFMs in these matters did not exhibit the same safety concerns around appearing at court. Whereas professional practitioners did not dispute that these matters involved family violence, they also stressed the poor fit between the FVIO legal process and outcome and the complex needs of some parties. These scenarios may therefore be better served by a more flexible process, affording parties greater agency in identifying issues and solutions.

As one Magistrate observed:

> *Where you get this complex web - in that case, I encourage there to be mediation with the assistance of [external agency] to try and work through the family issues that are underlying the dispute.*
>
> **Magistrate interview 4 April 2019**

Legal professional participants also suggested that parties would be assisted by processes that could effectively deal with contemporaneous family law issues given that, despite separate legal responses, parties did not experience their various intersecting legal issues as separate or discrete issues:

> *A lot of families treat [FVIOs] as a part of the family court process, and it's not. And it's so hard for both our clients and the respondents, to make them understand that this is purely about the [FVIO]. The Magistrate is not going to have anything to do with where your kids are going to live, or how much contact they have with their dad. And that is a very frustrating part of negotiations really.*
>
> **Specialist FV service focus group, 21 May 2019**

[25] Becky Batagol and Kate Seear (2019) Negotiating family violence: The need for reforms to ethics, communities of practice and legal education. Melbourne (provided to the authors, forthcoming).

This suggests that, in some cases, matters streamed into the shuttle negotiation stream may simultaneously or subsequently (depending on the preliminary assessment) proceed to court for FVIO application. The benefit of the pathway into the shuttle negotiation stream, however, would be an immediately apparent mechanism for resolution of family law related matters that appear to be otherwise complicating parties' understanding and negotiation in relation to FVIOs.

In addition to capacity to manage the complex matters described here, the CIJ suggests that lower risk matters generally may be better dealt with in the shuttle negotiation framework, as hinted at in the following lawyer commentary proposing a 'second list':

> *What I think they could do though is they could have a second list of matters that maybe shouldn't be in the [FVIO] list. Similar to your neighbourhood disputes that are not violent. Imagine if I go on Facebook live and I say, '[name] has stolen my boyfriend…, I'm going to get her.' Those ones could be done really quickly to clear the list so that everyone could really focus on what this legislation was set up for.*
>
> **Legal focus group, 6 May 2019**

Tensions in relation to negotiation in the context of family violence

The CIJ acknowledges differing perspectives on appropriate approaches in the family violence response landscape. A minority of submissions to the RCFV raised the potential use of mediation and restorative justice (RJ) principles in relation to family violence.[26] For example, the Women's Legal Service suggested that therapeutic justice and restorative approaches could be used in cases in which either, or both, parties to an FVIO present with complex needs.[27]

These suggestions stem from the objective of giving victim-survivors greater capacity to participate in decision-making and to give voice to their experience and needs.[28] Goals of this kind of approach include validation of victim-survivors' experiences; scaffolding of accountability of perpetrators; and restorative experiences for victim-survivors.[29] In relation to the latter, the CIJ clarifies that the proposed model does not purport to give effect to restorative justice principles.[30] Pragmatically, Field and Hyman note that resource savings associated with diverting families and offenders from criminal justice systems should make non-adversarial approaches attractive.[31]

Non-adversarial or therapeutic approaches, however, are also likely to encounter an element of hesitation, given that, as Mills observes, 'advocates have spent three decades trying to convince a sluggish criminal justice system that domestic violence is a crime'.[32]

[26] Victoria. (2015a) Submissions to the Royal Commission into Family Violence: Loddon Campaspe Community Legal Centre; Goulburn Valley Community Legal Centre. *Royal Commission into Family Violence.*
[27] Victoria. (2015b) Women's Legal Service Victoria: Improving the Family Violence Legal System. *Royal Commission into Family Violence.* Melbourne. The CIJ also notes that the RCFV made a separate recommendation (122) for a restorative justice model to be developed and piloted, and that members of this Advisory Committee have been involved in its development. (2017) Restorative Justice for Victim Survivors of Family Violence: Framework. Melbourne: Victoria State Government, Justice and Regulation.
[28] Victoria. (2015a) Submissions to the Royal Commission into Family Violence: Loddon Campaspe Community Legal Centre; Goulburn Valley Community Legal Centre. *Royal Commission into Family Violence.*
[29] Ibid., Carolyn Neilson and Bonnie Renou (2015) Will somebody listen to me? Insight, actions and hope for women experiencing family violence in regional Victoria. Bendigo: Loddon Campaspe Community Legal Centre.113
[30] Similarly, the CIJ notes that the Family Violence Restorative Justice Service is not a mediation service and has not been referenced as a relevant model <https://www.justice.vic.gov.au/fvrjservice>
[31] Rachael Field and Eugene Hyman (2017) Non-Adversarial Approaches to Domestic Violence: Putting Therapeutic Jurisprudence Theory into Practice. *Journal of Judicial Administration* 26: 275-292.360
[32] Linda Mills (2003) *Insult to Injury: Rethinking our responses to intimate abuse,* Princeton, Oxford: Princeton University Press.

In this vein, a long-standing and significant body of international literature insists that mediation can never be safely or appropriately conducted in the context of family violence, a reticence which the CIJ shares to an extent.[33] In Australia, this is reflected in family violence exemptions from the requirement for parties to mediate prior to family law proceedings[34] and, certainly, family law practitioners have long been wary of imposing mediation in the context of family violence.[35]

Despite understandable resistance to mediation in the context of family violence, the CIJ notes that it is well-recognised in the family law context that parties experiencing, or having historically experienced family violence, *can* and *do* participate in mediation.[36] This includes observations from specialist practitioners participating in this project (Specialist FV practitioner interview, 18 April 2019).

Further, a number of participants also suggested that the negotiations currently conducted between parties' lawyers and/or with police are similar to the shuttle model used in the ACT. Batagol and Seear's work on a legal conduct rule designed to improve lawyer conduct in relation to negotiations in the context of FV is also relevant here.[37]

Accordingly, the CIJ suggests that, whether the final model is called 'negotiation', 'mediation', or even a 'conference', formalising processes may simply have the effect of recognising and putting safeguards in place around negotiations that *do* already take place. Further, it is important to listen to what victim-survivors may themselves see as a priority.

Other models for adaption include VLA's Family Dispute Resolution (legally assisted model) and the Coordinated Family Dispute Resolution (FDR) scheme piloted in the family law context in five locations around Australia between 2010 and 2012. This program used a multi-disciplinary, collaborative and case managed approach, drawing on specialist responses to family violence. Specialist family violence risk assessments were built into the four-phased process, which included intake evaluations; comprehensive preparation for the mediation; attendance at the mediation; and repeated follow up post-mediation. In contrast with the consent 'without admissions' mechanism, alleged perpetrators were required, at a minimum, to acknowledge that another family member believed that family violence had impacted upon the relationship.[38]

Other issues for further consultation and consideration

A further issue for additional consultation with stakeholders following this research concerns the role of police in relation to negotiation stream matters. An appropriate model may involve police applications covering interim applications, but for police involvement then to 'lapse' subject to the outcomes of negotiations. This is, in part, because some parties may ultimately identify the primary issue as a family law, rather than a family violence, issue.

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[33] See eg. Dianna Stallone (1984) Decriminalization of Violence in the Home: Mediation in Wife Battering Cases. *Law & Inequality: A Journal of Theory and Practice* 2: 493-519.
[34] s60I(8) & s60I(9)(b) *Family Law Act 1975* (Cth)
[35] See for example Helen Cleak and Andrew Bickerdike (2016) One way or many ways: Screening for family violence in family mediation. *Family Matters* 98: 16-25.
[36] See eg. discussions around identification and screening for FV between family lawyers & FDR practitioners in Helen Rhoades, Hilary Astor, Ann Sanson and Meredith O'Connor. (2008) Enhancing inter-professional relationships in a changing family law system: Final Report. Melbourne: University of Melbourne; Moloney, Lawrie, Bruce Smyth, Ruth Weston, Nicholas Richardson, Lixia Qu and Matthew Gray, 'Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study' (2007) *Research Report No. 15* Australian Institute of Family Studies
Sara Dobinson and Rebecca Gray (2016) A review of the literature on family dispute resolution and family violence: Identifying best practice and research objectives for the next 10 years. *Australian Journal of Family Law* 30: 180-214.
[37] Becky Batagol and Rachael Field (2017) Safe and supported: Developing a model for mediating family violence cases beyond family law. provided by the author, a version of this article is publicly available https://adrresearch.net/2017/04/24/safe-and-supported-developing-a-model-for-mediating-family-violence-cases-beyond-family-law/, Batagol B and Seear K. (2019) Negotiating family violence: The need for reforms to ethics, communities of practice and legal education. Melbourne.
[38] Field and Lynch, above n 24.

As police have protective obligations (rather than obligations to act on AFM instructions) the negotiation model will also need to include appropriate independent risk assessment measures. These should help police satisfy concerns in relation to safety and justify police withdrawal of applications in matters where resolution does *not* involve an ongoing FVIO. This could involve a report prepared by the mediator. Similarly, in cases involving resolution of conditions in relation to a Consent Order proposal, police could be provided with some form of documentation or affidavit that can satisfy police in relation to their ongoing carriage of the application.

Professor Helen Rhoades has highlighted the potential tensions in legally assisted models of mediation, suggesting that mediators and lawyers can each fail to appreciate the outcomes or principles prioritised by the other.[39] However, Rhoades was also able to identify key aspects of successful collaborations between lawyers and FDR practitioners, including:

- a clear division of expertise and understanding of each other's separate roles;[40]
- mutual appreciation of different intake, screening and referral practices and shared understanding of dynamics of family violence;[41] and
- mutual trust and respect grounded in ongoing working relationships.[42]

These lessons should be transferrable to negotiators/mediators and lawyers assisting FVIO-related negotiations, suggesting that both FDR and family violence training would be required. The CIJ notes that this proposal is not one which has been costed or tested with stakeholders, as this was beyond the research brief. Rather, the proposal stems from the findings and triangulation of data from our large-scale qualitative study. Accordingly, it is offered to government for consideration and further consultation, with guidance provided by the diagram below, at Figure 1. Government may also wish to give further consideration to how this links with ongoing provision of case management services for AFMs and respondents.

Sub-goals of the streaming system, however, need to include:

- providing multiple junctures and some longer time frames in which AFMs and respondents can access advice and information to help them understand the FVIO legal system;
- providing parties with processes that are more tailored to their requirements and needs;
- improving system capacity for triage and effective risk assessment;
- ensuring that Magistrates' time is allocated, at the right point in time, to those matters requiring substantive judicial oversight;
- diverting appropriate matters to therapeutic and/or legal alternatives to the FVIO system;
- increasing the numbers of applications that resolve by consent (rather than ex-parte) and reduce the number of court dates required before that outcome is achieved.

The CIJ also points to concurrent developments at the MCV to increase court user engagement, including through the MCV's Contact Centre, to ensure that the goals of the streaming model are met with prompt and consistent information to parties.

[39] Helen Rhoades (2010) Mandatory mediation of family disputes: reflections from Australia. *Journal of Social Welfare and Family Law* 32: 183-194.
[40] Ibid.
[41] Ibid.
[42] Ibid.

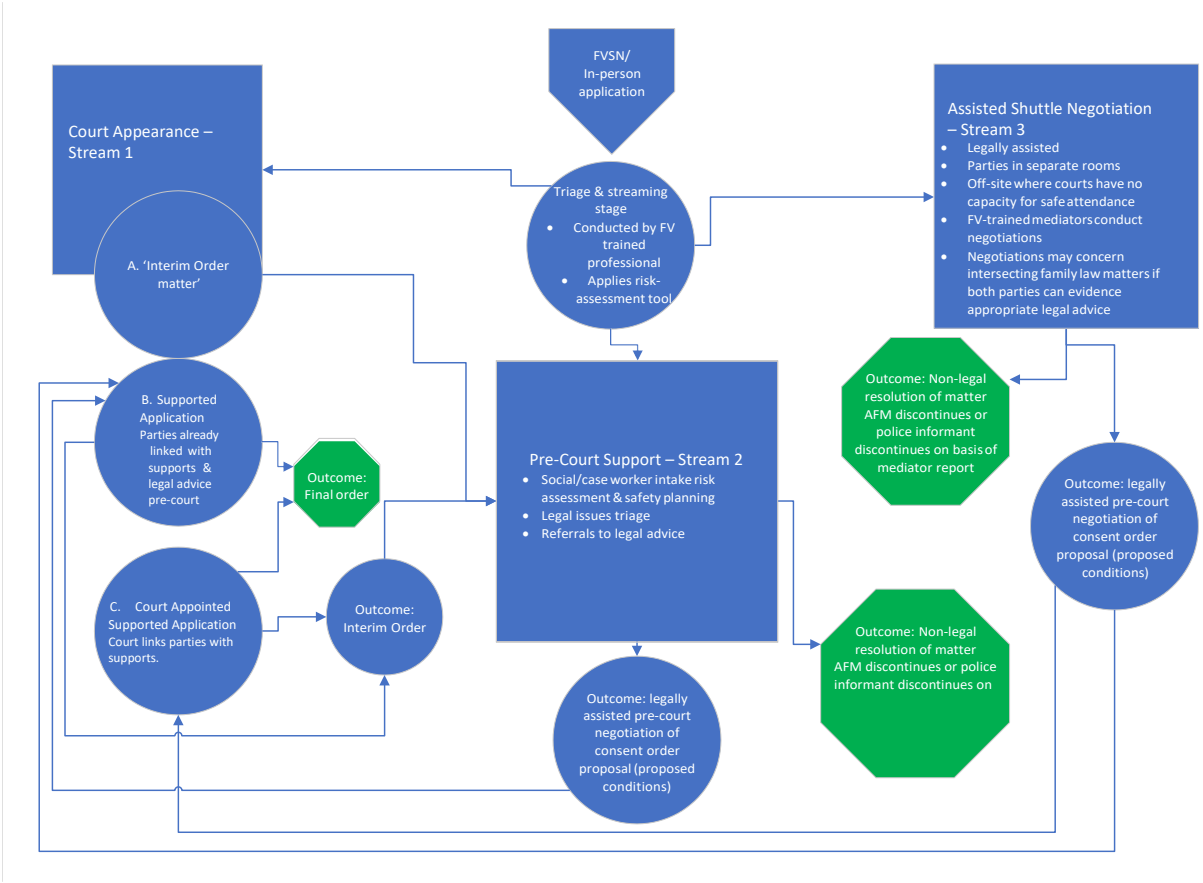
RECOMMENDATION 16: Standardised and streamed response to FVIOs

The Victorian Government should consult on and develop a standardised model for streamed responses to FVIOs which facilitates pre-court engagement with services for parties to FVIOs, as well as access to differentiated responses following appropriate risk assessment.

RECOMMENDATION 17: Facilitated communication with court users to support streamed responses

The Victorian Government and MCV should develop and implement online and electronic communication tools, including through the MCV's Contact Centre and other innovations, with FVIO parties to prompt pre-court service engagement and court attendance.

Figure 1: Proposal for streamed response to FVIOs



Part 3 – Reforms to the current process

In addition to a process which facilitates greater access to support and legal advice *before* court attendance, and which streams FVIO applications according to risk and need, the CIJ heard that other issues impacted on parties' capacity to negotiate FVIOs in a safe and supported way. Findings and recommendations in Part 2B of the report therefore highlight targeted reforms which could improve the existing experience for parties to FVIOs. Work on these therefore needs to proceed, regardless of considerations of the proposal regarding streamed responses.

Critical role of FV specialist and casework support

In particular, interviews and focus groups with AFMs and practitioners who work in multi-disciplinary settings highlighted the ways in which casework support at court could scaffold AFMs' capacity to understand and participate safely in the Consent Order process. Expansion of systems for early referral and casework support, as flagged in the CIJ's proposal regarding streamed responses, will assist safe attendance at court and AFM understanding of legal issues, as well as implications of proposed Consent Orders. The CIJ heard that benefits are compounded, however, when that support is provided on an ongoing basis by the same worker.

Specialist family violence case work funding should therefore include costing directly related to court support for AFMs in FVIO applications, where possible. These should not, however, come at the expense of support services available at court.

RECOMMENDATION 18: Specialist family violence casework funding for court support

Funding for specialist family violence casework support should be strengthened to facilitate a consistent caseworker to support the AFM prior to and during court at all stages of the FVIO process.

Further, one of the CIJ's findings throughout the research was that specialist family violence service providers were not always familiar with the FVIO or broader legal process. This in turn appeared to impact on the information which they were able to provide their clients. The CIJ suggests that the crucial role of family violence support workers should be strengthened with basic legal information training to ensure that all non-legal support practitioners fully understand both the legal process and the different roles played by system actors.

RECOMMENDATION 19: Family violence related support workers to undergo training specifically regarding FVIO process

The MCV should work with Family Safety Victoria (FSV), VLA and the Domestic Violence Resource Centre (DVRC) to identify existing training modules, or develop training modules, which can improve understanding of the FVIO process amongst staff at specialist family violence service providers.

Safe attendance of AFMs at court

Professional and AFM participants flagged the many practical reasons why AFMs would prefer not to attend court (days off work and child care being the most significant and frequently nominated). As noted above under the discussion in relation to the research's scope, participants also noted the lack of safe waiting areas, entries and exists as a further consideration. The CIJ emphasises, however, that reforms must still prioritise AFM's active involvement in, and understanding of, the system.

As noted previously, AFMs are not effectively protected when they may not adequately understand the Consent Order negotiation process (this was the case for *all* AFMs and respondents who participated in this research) and may not appreciate the conditions of Orders made. When AFMs attend court, their opportunities to have the Consent Order process and outcomes clarified only increase.

While investment in infrastructure improvements continues to unfold, including in accordance with RCFV recommendations, the onus lies with court employees to manage safety in relation to court spaces and court user entry and exits. This includes providing AFMs with information about any security options at court (eg. security escorts to car parks) clearly signed in areas of the court likely to be frequented by AFMs (the family violence counter or any safe waiting room areas) and explained to AFMs by Registrars.

RECOMMENDATION 20: Safe attendance of AFMs

All courts should develop a protocol which makes it an active goal to *enable* and support the safe attendance of AFMs. This should include protocols and information provided to AFMs about security options, as well as arrangements in relation to safe escort where these are not already in place.

The CIJ heard and observed that many police lawyers had very limited engagement with AFMs prior to the court room appearance element of proceedings. Where this engagement was limited, the task of police lawyers appeared to be more difficult. This included the burden on the system potentially increasing where AFMs have not been able to convey their needs; feel confident in reporting any subsequent breaches; or where the system was not operating with sufficient information as a result.

RECOMMENDATION 21: Police lawyer engagement with AFMs

Victoria Police should investigate ways in which police lawyers can improve their engagement with AFMs in the court environment. This should be supported by the Victoria Police Family Violence Centre of Learning.

Safe attendance of respondents at court

Further, the CIJ heard and observed that the interaction between police lawyers and/or uniformed police members in relation to negotiation with respondents was not always conducive to reduction in risk. This included exchanges which may potentially increase respondents' sense of being victimised by 'the system', rather than respondents feeling that they have been heard and participated in a just process. This relates to recommendations concerning procedural justice training for judicial officers, noted in Part 1 above.

The CIJ also heard about the benefits of pre-court contact between police and respondents, which may assist in their understanding of the process when they come to court. This was particularly the case given that participants reported that the period in which respondents were subject to a FVSN was not necessarily one in which they were engaged with services. Where respondents were excluded from the home and had not found stable accommodation, they were likely to be brought to court swiftly, but often in a state of heightened stress which in turn limited their capacity to engage with the process.

RECOMMENDATION 22: Pre-court engagement with respondents

The Victoria Police Family Violence Centre of Learning should develop protocols for pre-court engagement with respondents, including when a respondent is issued with a Family Violence Safety Notice (FVSN) and has been excluded from the home.

RECOMMENDATION 23: Procedural justice training for police negotiators

The Victoria Police Centre of Learning should ensure that training for police who interact with respondents at court include a significant component on the principles and applied practice of procedural justice and its relationship to family violence risk.

Crucial access to legal advice

Most participants reported that legal representation for both parties was more likely to result in safer Consent Order negotiations and conditions. The CIJ's discussions with AFMs, respondents, and professionals who supported them, however, confirmed that service users may have very limited understanding of the way in which the system operates and therefore the way in which the FVIO was imposed, its contents or its implications. This included parties who indicated to CIJ researchers that they *did* understand, with their comprehension of the system then revealed to be based on poor advice, misunderstandings or misconceptions.

A key finding from the CIJ's research is therefore that access to independent legal advice is a key protective factor often missing in FVIO cases, including in cases in which police have brought the application. This relates to the misconception apparent across the research that police 'act' for AFMs, when they do not; as well as a misconception evident in the CIJ's observations and reported in focus groups that AFMs always understand and support the terms of the order sought by police.

Where AFMs were represented by duty lawyers, the CIJ observed and heard in the research that duty lawyers would be more likely to make their client's case for an order which differed to what police were seeking, which is when negotiation actually occurred prior to court. Participants also reported that duty lawyers enabled AFMs to counter the confusion and panic in response to the spectre of Child Protection involvement or family law proceedings which would otherwise make them more likely to agree to exceptions regarding child contact.

Given the impacts of intersecting legal issues on the FVIO negotiation process, as noted in Part 1, the CIJ heard that AFMs are best served where they are connected to a specialist women's legal service or CLC servicing a court as duty lawyers, where there may then be *additional* funding which allows the service to take on the AFM as a casework client. The CIJ also heard that AFMs with intersecting legal issues are particularly poorly served when the FVIO application is brought by Victoria Police *and* they have limited opportunities for legal advice.[43]

[43] As noted above, a free VLA module called 'Intersections' could be a useful resource: http://learningthelaw.vla.vic.gov.au/Intersections-the-links-between-crime/story_html5.html

Given that many organisations are moving toward co-location and multi-disciplinary service provision as ways of addressing vulnerable clients' intersecting needs,[44] the CIJ suggests that services which currently provide immediate responses (second responders activated by the L17 notification) should also be encouraged *and funded* to employ family violence trained lawyers, or to enter into co-location or legal in-reach arrangements (and the legal provider organisations would in turn need to be adequately funded to support this arrangement). Recommendations in Part 1 regarding cross-jurisdictional training for family violence duty lawyers will also seek to address this concern.

In addition to legal advice for AFMs, practitioner participants acting primarily for respondents identified issues around respondent mental health and capacity to understand and retain information as key barriers to safe and supported Consent Order negotiations. Challenges for legal practitioners related primarily to the volume which was facing duty lawyers and which meant that they were only able to see a small number of respondents (and the CIJ heard from respondents participating in the research that few had accessed a duty lawyer service).

They also related to overly adversarial practices which revealed limited appreciation of the purposes of the FVIO jurisdiction, predominantly attributed to private practitioners, as noted in Part 1, and pointing to the need for policies which centre the objectives of the FVPA in legal practice.

The CIJ notes that increased funding for the expanded use of publicly funded legal assistance in the context of FVIO proceedings was an area which was not fully addressed by the RCFV, as this was being considered by the Access to Justice Review. Although additional investment followed in the 2017-18 budget, demand still outstrips available resources and may impact on FVIO outcomes as a result. Recommendations in this regard will therefore not be duplicating RCFV recommendations, but instead address a gap in current reforms.

Access to this increased legal advice would be further facilitated via the reform model for streamed FVIO responses articulated above. That said, as noted at the outset of this section, the need for legal advice which the CIJ heard about and witnessed directly means that investment in additional legal services for FVIO parties should not be dependent upon the CIJ's proposed reform model but is a priority in itself.

RECOMMENDATION 24: Early and multiple referral points for legal advice

AFMs and respondents should be referred for independent legal advice at every juncture in the FVIO system, along with L17 support referrals, at off-site venues (such as the Orange Door, Victims of Crime Helpline, Men's Referral Service or local CLC) and at court. These referrals in turn need to be sufficiently resourced.

RECOMMENDATION 25: Funding for integrated legal casework support

VLA and CLCs should be funded to assess and provide ongoing legal casework assistance in relation to the frequently multiple and intersecting legal issues affecting AFMs and respondents.

[44] Examples of services offering therapeutic casework or other support services as well as legal services include: Djirra, InTouch, LACW, VALS, MHLC and First Step.

Conclusion

The reforms proposed by the CIJ have a dual focus. The focus in Part 1 is to clarify and elevate the objectives of the FVPA, as well as their capacity to promote safety and accountability when FVIOs are imposed by consent. This includes clarification of the extent to which the court has an obligation to consider these objectives whenever imposing an FVIO, even when parties consent. It also includes potential amendments to the legislation which may mitigate the impact of a respondent's consent to an FVIO on their assumption of accountability.

Further, the focus of Part 1 also includes reforms which may strengthen the extent to which the FPVA's objectives are observed through the issuing of Practice Directions and promotion of Legal Conduct Rules which ensure that family violence risk is recognised and understood. In addition, it includes consideration of the extent to which interaction between parties and the court may address or increase risk, particularly where parties may feel confused and distressed at court. As such, it makes recommendations for a greater emphasis on the use of procedural justice by courts.

The CIJ's focus in Part 2 involves slowing down the Consent Order process long enough to alleviate some of this confusion and distress. This requires recognition that, if the legal system is going to respond adequately to the extraordinary demand it faces, then it must act counter-intuitively and take *more*, rather than less time with each family violence matter listed before the court. Equally, it must shift from a focus on system *activity* to system effectiveness.

This is because, while 'getting an order in place' may manage risk for players in the system – including police, legal practitioners, specialist family violence providers and courts – the objective of safety is not going to be met if this order has no meaning to the parties concerned. Worse, if the activity of the system has in fact *escalated* the risk to the AFM – whether by virtue of discouraging her from calling the police again, or by increasing the respondent's sense that he is a victim of the system or, alternatively, above the law – that activity has been in vain.

Accordingly, Part 2 proposes a streamed approach to FVIOs which enables early access to legal advice and specialist support prior to parties agreeing to Consent Order proposals and, in some targeted cases, being streamed into legally supported negotiation which is more suited to the circumstances of particular cases once risk has been appropriately assessed.
Part 3 then makes a number of recommendations for improvements to the existing FVIO response which can increase the extent to which parties are safe and supported at court. This includes increased access to legal assistance, in particular, as well as ongoing casework support which can further support engagement for FVIO parties. The CIJ urges that implementation of these recommendations should not be dependent on the Victorian Government's consideration of the CIJ's proposal for streamed responses, but are priorities in their own right.

Overall, the specifics of what happens when FVIO applications reach court and, in most cases, are reached by consent, need more considered focus. As Victoria moves further into bedding down broader RCFV reforms, however, the CIJ's findings and recommendations signal the opportunity for the emergence of a vastly strengthened FVIO system which can respond more flexibly to the complexity and diversity of family violence matters which come before it. Most importantly, they are likely to contribute to greater confidence in the system on the part of service users and, together with other co-occurring RCFV reforms, a system which works at every point towards safety and accountability and the FVPA's original intent.

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