women's legal service victoria

Jacinta Dwyer Research Internship Report 2024

What are the opportunities for, and barriers to, addressing the fragmentation of legal systems that hear matters involving family violence?

By Georgia Rowles

womenslegal.org.au

Acknowledgement of Country

Women's Legal Service Victoria works on the sovereign lands of the Wurundjeri people of the Kulin Nation. We acknowledge their role as custodians of Country and pay our respects to their Elders, lores, customs and creation spirits. As a specialist women's legal service, we acknowledge the way Australia's colonial legal and justice system continues to disproportionately harm Aboriginal and Torres Strait Islander women and children. We commit to working in allyship with Aboriginal and Torres Strait organisations and communities to dismantle systems of marginalisation and discrimination. We acknowledge that sovereignty was never ceded. This land always was, always will be, Aboriginal Land.

About Georgia Rowles

Georgia Rowles is a law student who is completing her Juris Doctor at Monash University. Having worked in family law alongside her degree, Georgia has seen some of the challenges faced by many clients who have experienced family violence and are navigating the legal system.

Georgia is passionate about working in law reform, as well as working closely with clients to solve their legal matters, and hopes to pursue a career in both areas.

This research project is a product of Georgia's extensive research in this area as well as her practical experience in family law.

About Women's Legal Service Victoria

Women's Legal Service Victoria (Women's Legal) is a for-purpose organisation that has been providing free specialist legal services since 1982, working with and for women and non-binary people to address legal issues arising from family violence and relationship breakdown.

Women's Legal's vision is that women and non-binary people live free from violence and discrimination in a gender-equitable society. Women's Legal's unique contribution to this vision – as lawyers, social workers, financial counsellors, advocates and educators – is to work alongside women and non-binary people experiencing disadvantage to promote their rights to live free from violence and make informed choices about their relationships.

Women's Legal specialises in family and sexual violence, family law, migration, child protection, criminal law and victims of crime assistance – recognising the intersection between the jurisdictions. Women's Legal focuses on women's safety, recovery from violence and economic security by:

- Providing legal advice and representation to women and non-binary people, with a wraparound model of service delivery where clients are also supported by social workers and financial counsellors, depending on their needs.
- Advocating for law and policy that respects and promotes the rights of women and non-binary people.
- Building the capacity of other professionals and communities to identify and respond appropriately to legal need.

About the Jacinta Dwyer Research Internship

Supported by the Victorian Magistrates' Association, the Jacinta Dwyer Research Internship is a paid research internship in honour of Jacinta Dwyer, a compassionate lawyer, Magistrate and much-admired former staff member of Women's Legal.

The Jacinta Dwyer Research Internship is for final year and honours students of law, social work, community development or financial counselling to undertake research aimed at delivering practice improvement and better outcomes for women experiencing family violence.

Foundations of the research project

Women's Legal puts clients – individually and collectively – at the centre of everything it does. As specialists in family violence, Women's Legal works across the spectrum from tertiary response to primary prevention of gendered violence. The service works with clients to achieve optimal legal and wellbeing outcomes, and integrates learnings in law reform advocacy, to put forward well-informed systemic and structural solutions that will improve the safety and wellbeing of clients and their children, and work towards the elimination of gendered violence.

This research project is informed by a range of sources including previous submissions, academic literature and practitioner insights. This research has been developed in consultation with current Women's Legal lawyers, social workers, and financial counsellors as well as court staff and judicial officers. The consultative aspect of this project draws directly on the practice experience of these professionals who support victim-survivors who have experienced family violence to navigate multiple court systems, as well as the judicial officers who hold the decision-making responsibility in these matters.

Women's Legal is deeply committed to advocating for change that is informed by clients' lived experiences and, as such, client stories are shared in this research. The stories are included with client consent and have been de-identified to protect safety and privacy.

This research uses gendered language in relation to family violence because women are nearly three times more likely than men to experience violence from an intimate partner.[1] The use of gendered language is not intended to exclude or diminish the experiences of people who are gender diverse or do not identify as women and have experienced family violence. Instead, it recognises that while people of all genders can be users or victim-survivors of family violence, it is primarily a form of gendered violence by men against women.

This research also focuses specifically on opportunities to address the fragmentation between the Federal Circuit and Family Court (FCFCoA) and the Magistrates' Court of Victoria (Magistrates' Court) in addressing legal matters involving family violence. Any solutions proposed by this research may have the potential to be put into practice and implemented in a pilot in Victoria, with the possibility of extending to other states and territories.

[1] Maani Truu, 'Women are three times more likely than men to report violence by their partner, as rates of sexual harassment fall' (online, 15 March 2023) <https://www.abc.net.au/news/2023-03-15/abs-personal-safety-survey-partner-violence-abuse-falls/102089786>.

Introduction

This research project focuses on the fragmentation of legal systems and their respective court processes that hear matters involving family violence, with a specific focus on the experiences of victim-survivors in Victoria.

Women seeking legal protection from family violence for themselves and their children are often required to participate in multiple different jurisdictions for overlapping reasons. For example, at any one time a family may be engaged in litigation where family violence is the key fact-in-issue simultaneously in the Magistrates' Court for a Family Violence Intervention Order (FVIO) and any related criminal proceedings, or the FCFCoA for parenting arrangements, property settlement, divorce, annulment or child support.

Over the years, many different solutions have been proposed to address the burdens arising from having to attend multiple courts for matters involving family violence. This research has canvassed some of these proposed solutions, and the opportunities and barriers that they present.

This research project aims to dig deeper into the stories of women who have experienced this issue and bring to light solutions that have been discussed with practitioners working in the family violence legal assistance sector.

Specifically, this research looks at existing opportunities for the FCFCoA and the Magistrates' Court to exercise cross-jurisdictional powers under section 68R and section 68B of the *Family Law Act 1975* (Cth) (FLA).[2] The operative legislation referred to when discussing the powers of the Magistrates' Court is their power under the *Family Violence Protection Act 2008* (Vic) (FVPA).

This research looks at opportunities to improve information sharing mechanisms between these two courts, drawing on discussions with legal practitioners and the profession more broadly.

[2] *Family Law Act 1975* (Cth) s 68R and s 68B (Family Law Act).

Dannii's story

Dannii* is a former Women's Legal client who had FVIO proceedings in the Magistrates' Court and parenting proceedings in the FCFCoA. Her experience highlights some of the burdens that women face when having to attend multiple courts for matters involving family violence:

> *"To be able to attend court hearings I had to keep things in mind like organising childcare. This was stressful because sometimes my friends would have to take days off work to help me if my court days did not align with my son's childcare and I felt like a burden to them.*
>
> *One of the main challenges going to different courts was also the mental aspect. When I was getting pushed around from lawyer to lawyer I would always have to retell and relive my story. My case went on for about three years so you can just imagine how mentally drained I was, especially after being in an abusive relationship.* ***I was already worn out and having to repeat this process over and over again was horrible.***
>
> *Another thing that was extremely challenging was the duration of the whole process. Although it was worth it in the end, for the years I had to go through court, I felt as if I couldn't move on with my life due to the high stress and I was just stuck in time. The other party was given an abundance of chances from the court which I felt prolonged how long it went on for.* ***This has caused some emotional trauma and scars for me."***

**not her real name*

Methodology

This research focuses on the fragmentation of legal systems in Victoria that hear matters involving family violence. The methodology for this research included:

- Client stories from Women's Legal clients whose legal matter involved family violence and who were required to attend more than one court.
- A review of relevant literature, submissions and reports on this issue (including submissions to the Inquiry of the Standing Committee on Social Policy and Legal Affairs into Family Violence Orders which commenced in 2024 and at the time of writing this report was not yet finalised).
- Consultations with practitioners of the Magistrates' Court and the FCFCoA.

- Consultations with Women's Legal lawyers, social workers and financial counsellors who work in family violence matters.

Limitations

Recent amendments to the *Family Law Act 1975*

The *Family Law Amendment Act 2023* (Cth) and the *Family Law Amendment (Information Sharing) Act 2023* (Cth) were passed by Parliament on 19 October 2023, with the changes to the FLA commencing on 6 May 2024. This makes it difficult to accurately analyse how the FCFCoA is currently considering FVIOs in parenting proceedings, given the significant reforms that were introduced.[3] Additionally, it is difficult to analyse the functions and impact of the amendments. These changes have been observed to make "some positive steps forward", but given how recently they were implemented, "their effectiveness at safeguarding children and victim-survivors of family violence is yet to be determined."[4]

Review of the Federal Circuit and *Family Court of Australia Act 2021*

The Attorney-General has commenced a review of the *Federal Circuit and Family Court of Australia Act 2021* in the context of the Family Court having merged into a single court with the Federal Circuit Court in 2021. A report of this review is due in March 2025 meaning that any findings relevant to this research are unable to be considered.

Intersectionality of this issue

It is important to recognise that the experience of the family violence legal system can look different for women of different cultural and demographic backgrounds. For example, the issue of misidentifying family violence victim-survivors as perpetrators (or predominant aggressors) is particularly prominent for First Nations women, migrant and refugee women, and women living with disability.[5] This can have profound impacts for women who are involved in multiple court proceedings. For example, if they have been misidentified as the perpetrator in one or more proceeding, it could impact the findings and outcome in another jurisdiction. Deep diving into these intersectional experiences of women in the family violence legal system is unfortunately

[3] Ibid s 60CC(2A)(b).
[4] Gabrielle Craig and Amy Power, 'Is it safe enough? Changes to the Family Law Act' (2023) *Law Society Journal Online* 1.
[5] Jan Shuard PSM, *Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor* (Report, December 2021) 11.

beyond the scope of this research but must be acknowledged and considered in developing any system response to the issues raised.

Literature review

The fragmentation of legal systems that hear family violence matters

Australia has a federal system of government where the division of powers between the federal and state and territory governments is constitutionally protected.[6] A federal system of government has some advantages for pursuing law reform and policy innovation because it enables "decentrali[s]ed experimentation, mutual learning, and competition."[7]

However, whilst federalism is thought to increase innovative policy making, Australia's federal system of government has meant that legal responses to matters that involve family violence are often disjointed and fragmented.[8] The FCFCoA exercises federal jurisdiction over family law whereas the state and territory courts deal with child protection and family violence matters.[9] This fragmentation means that those who seek legal protection from family violence can find themselves in multiple courts and jurisdictions within a system that is "complex and confusing and may be too hard to navigate."[10]

Family violence responses in other domestic and international jurisdictions

As noted above, no single jurisdiction in Australia has sole responsibility for family violence matters. All states and territories except Western Australia are part of the "constitutionally entrenched fragmentation" where the family law system is federal and the FVIO systems operate at the state and territory level.[11] This can lead to a fragmented response to legal matters where family violence is a key fact-in-issue.

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[6] Louise Chappell and Jennifer Curtin, 'Does Federalism Matter? Evaluating State Architecture and Family and Domestic Violence Policy in Australia and New Zealand' (2012) 43(1) *The Journal of Federalism* 24, 27.
[7] Wolfgang Kerber and Martina Eckardt, 'Policy Learning in Europe: The "Open Method of Coordination" and Laboratory Federalism' (2005) 48(1) *Thünen-Series of Applied Economic Theory – Working Paper* 1, 1.
[8] 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) 72(2) *Australian Social Work* 215, 216-217.
[9] Women's Legal Service Australia, Submission No 69 to The Standing Committee on Social Policy and Legal Affairs *Inquiry into Family Violence Orders* (26 July 2024) 34.
[10] Hilary Astor and Rosalind Croucher, 'Fractured Families, Fragmented Responsibilities – Responding to Family Violence in a Federal System' (2010) 33(3) *UNSW Law Journal* 854, 857.
[11] House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence* (Report, December 2017) 75.

However, in some other jurisdictions, such as Western Australia and in New York, legal responses to family violence are comparatively less fragmented.

Western Australia

The Family Court of Western Australia (FCWA) is not part of the federal FCFCoA system and therefore can exercise jurisdiction in relation to both family law and family violence matters.[12]

The FCWA can exercise powers that are usually exclusive to either the federal FCFCoA jurisdiction or the state and territory courts. For example, the FCWA has limited power to make restraining orders against someone who is a party to proceedings that are being heard under the *Family Court Act 1997* (WA).[13] Contrastingly, the FCFCoA cannot make FVIOs in other state and territories such as Victoria, where this power is exclusive to the Magistrates' Court.

However, the FCWA has stated that it only makes restraining orders in a "very small number of cases" due to a lack of "judicial resources… to deal with restraining order applications in a timely manner".[14] This limitation is mitigated through a comprehensive information sharing scheme between the FCWA and the Magistrates' Court of Western Australia.[15]

As is explained by the FCWA, this information sharing arrangement is particularly related to any relevant history of restraining orders and criminal offending concerning litigants. For example:

> *"…at the first hearing of every new family law application in the FCWA seeking parenting orders, a family consultant (from the Court's Counselling and Consultancy Service) participates in the hearing with the family law magistrate. The family consultant has access to the Western Australian Courts' electronic case management system (ICMS) in the court room and can provide "live" information to the family law magistrate and the parties, such as: (1) past and current restraining orders; (2) historic convictions for breaches of restraining orders; and (3) pending charges for breaches of restraining orders. The family law magistrate is able to take this information into account when considering what arrangements would promote the safety of the child the subject of the parenting proceedings, as well as each person who has care of the child."*[16]

[12] Family Court of Western Australia, Submission No 10 to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders (23 July 2024) [1].
[13] *Restraining Orders Act 1977* (WA) s 62(2).
[14] Family Court of Western Australia (n 12) [4].
[15] Victorian Government, *Guidance for Information Sharing Entities* (Family Violence Information Sharing Guidelines, December 2017).
[16] Family Court of Western Australia (n 12) [5].

New York

In New York, Integrated Domestic Violence Courts (IDV Courts) have been implemented. In IDV Courts, a single judge hears "criminal, civil and matrimonial cases involving the same parties",[17] rather than requiring them to appear in multiple courts for similar and intersecting legal issues. IDV Courts have "specially trained judges and court staff" who are dedicated to hearing only domestic violence cases.[18] Thus, IDV Courts attempt to address the overlapping needs of victim-survivors of family violence, such as family court parenting matters and civil personal protection matters, in the one court.

There has been demonstrated success of IDV Courts in addressing the overlapping needs of victim-survivors of family violence. A survey of the experience of IDV Courts found that "litigants felt that the IDV Court judge took their opinion into account, that the IDV Court model saved them from taking extra time off work, and that the court made getting to and from court easier."[19]

For Victorian women navigating these same issues, the Magistrates' Court and the FCFCoA are less integrated. The cross-vesting of powers between the Magistrates' Court and the FCFCoA, and its limitations, is discussed in detail as part of this research. Ultimately, the fragmentation of powers and jurisdictions of the FCFCoA and the Magistrates' Court can have far-reaching consequences for women who are seeking legal protection from family violence.

The impacts of a fragmented legal system for women experiencing family violence

In Australia's federal system, the separation of powers between the Commonwealth and the states and territories means that women experiencing family violence are often "simultaneously in multiple systems"[20] when seeking legal protection. In 2009, the Family Law Council advised that:

> *"The reality for a separating family experiencing contentious issues in respect of parenting capacity is that there is no single judicial forum that can provide them with a*

[17] Sarah Picard-Fritsch, *Litigant Perspectives in an Integrated Domestic Violence Court* (Report, Centre for Innovation, December 2011) 1.
[18] Ibid 1.
[19] Ibid 22.
[20] Laing, Heward-Belle and Toivonen (n 8) 217.

> *comprehensive response to address their disputes, particularly where there are underlying issues of family violence and/or child abuse."*[21]

This experience can be "confusing, costly, time consuming and traumatic."[22] There is the possibility of inconsistent and contradicting orders being made by different courts, the requirement to repeat evidence, and a need to keep on top of competing and ongoing court dates.[23]

A FVIO can be made in the Magistrates' Court that prohibits contact with a child, but it can be subsequently overridden by parenting orders made in the FCFCoA, under section 68Q of the FLA, if there is an inconsistency between the orders.[24] This can be confusing for parties. Different courts can also have different levels of safety planning, such as secure rooms and staggered arrival times, however women may still have to face their perpetrator at court.[25]

Additionally, "victim-survivors often are required to present evidence about family violence perpetrated against them in multiple court settings, even where the evidence may be largely the same."[26] As Clara, a former Women's Legal client stated:

> *"I always had to repeat evidence all the time. Remembering all the things he had done, it does bring up bad memories."*

A review conducted by Victoria Legal Aid (VLA) has recognised that it is often "the most vulnerable clients" who present with multiple legal problems, such as a FVIO matter and a family law dispute.[27] In this context, vulnerable clients include clients experiencing economic disadvantage, language and cultural barriers, mental and physical health issues, low literacy and education, and victim-survivors of family violence.[28] This finding suggests that any reforms to address the issue of a fragmented family violence legal system have the potential to help a particularly vulnerable group of people with a cluster of legal problems.

Women seeking legal protection from family violence should feel protected and safe when navigating the legal system. However, it is concerning that many victim-survivors who experience this system report feelings of being unsafe, unprotected and even retraumatised.[29] It is imperative that solutions to this issue be found, so that victim-survivors have safe and consistent outcomes when involved with these systems.

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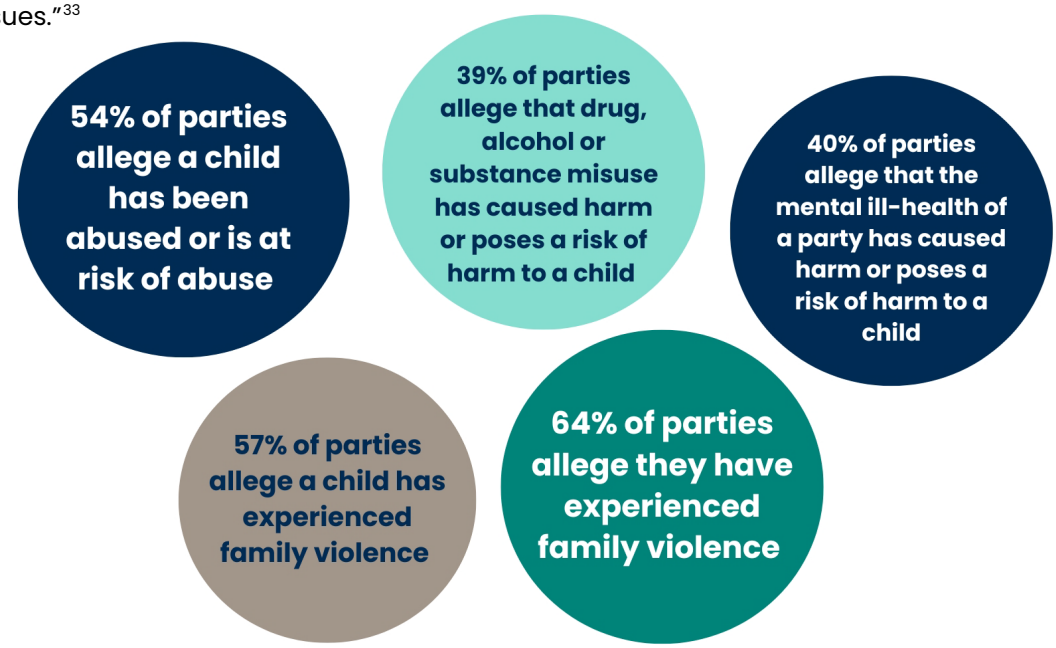
[21] Family Law Council, *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* (Report, December 2009) 48.
[22] Women's Legal Service Australia (n 9) [35].
[23] Productivity Commission, *Access to Justice Arrangements Inquiry* (Report No 72, Vol 2, 3 December 2014) 866.
[24] Family Law Act (n 2) s 68Q.
[25] Sage Wilde, Nicola Sheeran and Heather Douglas, 'The psychological impact on mothers who have experienced domestic violence when navigating the family court system: a scoping review' (2024) 31(4) *Psychiatry, Psychology and Law* 764, 778.
[26] Women's Legal Service Australia (n 9) [36].
[27] Victoria Legal Aid, *Family Law Legal Aid Services Review* (Consultation and Options Paper, January 2015) 21.
[28] Ibid 20-21.
[29] Heather Douglas, 'Domestic and Family Violence, Mental Health and Well-being, and Legal Engagement' (2018) 25(3) *Psychiatry, Psychology and Law* 341, 341.

Findings

Australia has a disjointed system for responding to family violence. This is caused in part by the federated structure of the legal system where powers are distributed between the Commonwealth and the States and Territories

As stated above, VLA data has suggested that it is often the most vulnerable clients who present with multiple legal problems.[30] Further, data collected by the FCFCoA demonstrates that "80% of family law cases allege at least one major risk factor (including family violence)" and "around 50% of high-risk matters screened… contain four or more major risk factors."[31]

However, an effect of Australia's federalism and the separation of powers is that there can be a "fragmented" and "overlapping"[32] legal response to these intersecting issues. Neither the federal nor state and territory governments have exclusive legislative competence in family violence matters and therefore cannot provide a "complete suite of judicial solutions to address all of the legal issues."[33]



Source of graphic: Media & Public Affairs, Federal Circuit and Family Court of Australia.[34]

[30] Victoria Legal Aid (n 27) 5.
[31] Denise Healy, 'New court initiatives help uncover higher prevalence of family violence and other risk' (Media Release, Media & Public Affairs, Federal Circuit and Family Court of Australia, 10 November 2021) 1.
[32] Sara Peel and Rosalind F. Croucher, 'Mind(ing) the gap Law reform recommendations and responding to child protection in a federal system' *Family Matters* (2011) 89(21) 2.
[33] Family Law Council (n 21) [7.3.2].
[34] Denise Healy, 'New court initiatives help uncover higher prevalence of family violence and other risk', (Media Release, Media & Public Affairs, Federal Circuit and Family Court of Australia, 10 November 2021)

This research has specifically focused on addressing the experience of women who are involved in legal proceedings in the FCFCoA and the Magistrates' Court of Victoria where family violence is a key fact-in-issue.

Victim-survivors of family violence bear a considerable burden in navigating complex, cross-jurisdictional legal systems when seeking legal protection from family violence

What is evident in discussions with Women's Legal clients and practitioners is that women bear a considerable burden in navigating multiple court systems for overlapping matters that involve family violence. These range from logistical considerations to emotional impacts and traumatising experiences.

For example, Women's Legal client Dannii shared:

> *"To be able to attend court, I had to keep things in mind like care for my child, which was usually by close friends because my days for court did not align with my son's childcare schedule. This was stressful as sometimes my friends would have to take days off work to help me and I felt like a burden to them."*

For Clara, she stated:

> *"I am lucky that I don't have young kids. But I did have to organise around work, such as taking days off to attend court. My work was understanding, but it is frustrating having to miss out on a day of pay."*

For Tayla, she stated that:

> *"The hardest part of the process was seeing my previous partner there which was quite traumatic and made me very uneasy. I did not want to ever see him, and this process forced me to."*

Another challenge that women face in navigating different court systems for family violence matters was explained by a social worker at Women's Legal:

> *"I think another big challenge for clients is actually understanding the differences between the courts and their distinct role. To you, it is all family violence, and you look to these systems for support, but what ends up happening is clients are having to pick apart their stories over and over in these different systems."*

These impacts and burdens are also frequently discussed and addressed in submissions, reports, and inquiries related to this issue. Together, they indicate that women seeking legal protection from family violence bear a considerable burden in navigating multiple court systems, retelling traumatic evidence and facing their perpetrators.

Opportunities between the FCFCoA and the Magistrates' Court to alleviate this burden

Different recommendations have been made in submissions and reports to resolve the issue of a fragmented family violence legal system. These include:

- *State referral of powers to the federal family courts.*
- *Establishing a single "one stop shop" court that deals with all matters relating to family violence.*
- *Expanding the jurisdiction of the federal family courts so that they have the power to make family violence intervention orders.*
- *Giving state and federal courts corresponding jurisdictions so that they can decide cases under both systems."*[35]

The idea of one court or a "one-stop shop" for all legal matters involving family violence was recommended in 2019 by the Australian Law Reform Commission (ALRC):

> ***Recommendation 1*** *The Australian Government should consider options to establish state and territory family courts in all states and territories, to exercise jurisdiction concurrently under the Family Law Act 1975 (Cth), as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts.*[36]

This idea is similar to the function of the IDV Courts in New York, which appear to have proved successful in addressing the burdens of a fragmented family violence legal system. In the absence of systems reform at this scale, this research examines changes that can be more immediately made to improve women's experiences of existing systems.[37] Rather than developing new one-stop shop courts, solutions that encourage and support the federal FCFCoA and the Magistrates' Courts to exercise cross-jurisdictional powers should be considered.

For example, solutions proposed in the submissions to the Inquiry into Family Violence Orders include:

- Increasing the use of section 68R of the FLA.[38]
- Amending the FLA to empower and resource the FCFCoA to make FVIOs.[39]

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[35] Castan Centre for Human Rights Law, Submission No 57 to The Standing Committee on Social Policy and Legal Affairs Inquiry into A Better Family Law System to Support and Protect those Affected by Family Violence (March 2017) 5.
[36] Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Report 135, March 2019) 15.
[37] House of Representatives Standing Committee on Social Policy and Legal Affairs (n 11) 78-79.
[38] Associate Professor Miranda Kaye, Submission No 6 to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders (10 July 2024).
[39] Relationships Australia, Submission No 7 to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders (16 July 2024) 2.

- Increasing information sharing between the federal and state and territory courts.[40]

What is clear from stakeholder submissions is that the current legal system is far from being as effective as the "one-stop shop" courts in New York when addressing matters that involve family violence. Rather than providing an integrated, efficient and protective response in these matters, the system is fragmented, and can be difficult or unsafe for women to navigate.[41]

Discussion

Improved integration and communication between the FCFCoA and the Magistrates' Court is required in order to provide a safer and more efficient response to legal matters that involve family violence. There are existing opportunities that might achieve this, such as through the exercise of cross-jurisdictional powers between FCFCoA and the Magistrates' Court.

The cross-vesting of jurisdiction between the FCFCoA and the Magistrates' Court

The FCFCoA and the Magistrates' Court each have their own jurisdictional powers. For example, the FCFCoA does not have jurisdiction to make and enforce FVIOs as this is a responsibility of the Magistrates' Court. However, the FCFCoA has jurisdiction to make parenting orders, whereas the Magistrates' Court is limited to making interim orders and only final orders by consent.[42]

Section 68R of the FLA

Section 68R of the FLA gives the Magistrates' Court the power to "revive, vary, discharge or suspend" an existing parenting order made in the FCFCoA.[43] In situations of family violence where a continuation of parenting arrangements pursuant to court orders would place a protected person at risk, Magistrates have the power under section 68R to order that any parenting arrangements in place between the parties under the FLA be suspended, discharged, revived, or varied.

[40] Women's Legal Service Australia (n 9) 8.
[41] House of Representatives Standing Committee on Social Policy and Legal Affairs, *Parliamentary Inquiry into a better family law system to support and protect those affected by family violence - Snapshot 1: Navigating the family law system* (Snapshot, 1 September 2017).
[42] 'Family law', *Magistrates' Court of Victoria* (Webpage) <https://www.mcv.vic.gov.au/family-matters/family-law>.
[43] Family Law Act (n 2) s 68R.

Section 68R of the FLA can also resolve inconsistencies between parenting arrangements made in the FCFCoA and FVIOs.[44]

For example, situations may arise where a parent is allowed to spend time with their child under orders made in the FCFCoA, but that parent subsequently commits violence against the other parent or child of the relationship. The other parent may choose to seek protection by applying for a FVIO, naming themselves and the child as protected persons. Police may also seek protection for the parent and child under a FVIO with or without their support, if they assess the situation as being necessary to do so.

In this situation, the starting point is that the parenting order made in the FCFCoA prevails against any other order and the parent named the *Respondent* in the FVIO is still allowed to spend time with the child. However, section 68R recognises that in some situations, it may be unsafe for the parenting arrangements made in the FCFCoA to continue. The powers under section 68R can be invoked to ensure that the violent parent is no longer able to spend time with the child in accordance with the existing parenting orders.

The ALRC has commented:

> *"Many stakeholders considered that s 68R was an important provision and should be used more frequently to ensure that inconsistent orders do not place victims of family violence at risk of further violence during contact authorised by a parenting order."*[45]

However, during discussions with Women's Legal lawyers, it was noted that section 68R is often seen to be intended as a temporary solution. This is because safety is the paramount consideration of the Magistrates' Court and the FVPA. Thus, evidence is taken at its highest in the Magistrates' Court with a view that an application to vary parenting orders should be made to the FCFCoA soon after section 68R is invoked, rather than it being an indefinite solution.

Thus, the powers under section 68R can be an effective exercise of federal jurisdiction by Magistrates to provide clarity and consistency on parenting arrangements to women experiencing family violence who are involved in multiple court proceedings. However, the use of section 68R can also be limited.

Limitations of section 68R

There are notable limitations to the use of this provision. Firstly, a parenting order must have already been made in the FCFCoA for section 68R to be able to be invoked.[46] This issue of timing means that if an application for a FVIO is made *before* proceedings are initiated in the FCFCoA, section 68R is not relevant unless a party later seeks suspension of their parenting orders.

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[44] Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response* (ALRC Report No 114, Australian Law Reform Commission, 2010) 698.
[45] Ibid 699-700.
[46] Ibid 700.

Secondly, section 68R can be "used as a form of systems abuse against victim-survivors."[47] Systems abuse has been recognised as a method of abuse used by family violence perpetrators post-separation when "many of the methods of abuse previously employed by the abuser may no longer be available."[48] Perpetrators of systems abuse can often make numerous baseless and vexatious applications in various courts as a method of further coercion and control of victim-survivors post-separation. Thus, perpetrators of systems abuse can vexatiously make an application to vary, suspend or revoke a parenting order under section 68R of the FLA.

Thirdly, the use of section 68R is limited to each individual Magistrates' "experience and knowledge about section 68R and general family law proceedings".[49] One Women's Legal lawyer observed that she had rarely seen section 68R used by Magistrates:

> *"It might be a case of the chicken and the egg. Lawyers don't ask for it often, and Magistrates don't give it."*

These limitations were also discussed in the Public Hearing for the Inquiry into Family Violence Orders on 30 August 2024. Bernadette Grandinetti, Acting Associate Director of Family Law at Victoria Legal Aid, stated:

> *"…our lawyers tell us that most Magistrates are reluctant to vary or revoke an order [made by the FCFCoA]… Some of this comes down to a lack of understanding of the family law system or to not having all the necessary risk information before them or, if that matter is already going through proceedings in the family law courts, to seeing that as the proper venue to ventilate those issues, rather than in a state based Magistrates' court, where they have all that information before them."*[50]

The ability of Magistrates to exercise powers under the FLA would likely also require "appropriate funding" to resource a greater exercise of family law jurisdiction by the Magistrates' Court.[51]

As a result, the ability of the Magistrates' Court to exercise federal jurisdiction under section 68R of the FLA is limited and the opportunity for section 68R to "fill a gap in the protection of victims of family violence" is underused.[52] Women seeking to revive, vary, discharge or suspend parenting arrangements because of safety concerns will likely need to go back to the FCFCoA to do so, as orders made under section 68R are not a long-term solution. Thus, the issue of a fragmented legal response to family violence persists.

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[47] Fitzroy Legal Service, Submission No 44 to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders (July 2024) 7.
[48] Heather Douglas, 'Legal Systems abuse and coercive control' (2018) 18(1) *Criminology & Criminal Justice* 84, 84.
[49] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 701.
[50] Evidence to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders, Canberra, 30 August 2024, 7 (Bernadette Grandinetti).
[51] Magistrates' Court of Victoria, Submission No 56 to the Parliamentary inquiry into a better family law system to support and protect those affected by family violence (May 2017) 1.
[52] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 702.

Federal jurisdiction to make Family Violence Intervention Orders

A further opportunity for the exercise of cross-jurisdictional powers between federal and state courts exists in giving Personal Protection Orders made in the FCFCoA similar weight and enforcement as state-based FVIOs.

The FCFCoA can make Personal Protection Orders under section 68B of the FLA.[53] This includes the power to make an injunction restraining a person from entering a child or parent's place of residence, employment or education. Further powers under section 114 of the FLA give the FCFCoA power to make an injunction for the personal protection of a party to the marriage.[54]

These orders have an automatic power of arrest if they provide for the "personal protection" of a person.[55] This authorises a state or federal police officer to arrest the Respondent if they reasonably believe that the Respondent has breached an order.[56] However, practical limitations to the enforcement of Personal Protection Orders under the FLA are evident, as Fitzroy Legal Service noted in their submission to the Inquiry into Family Violence Orders :

> *"In reality, the state police often refuse to arrest or to enforce injunctions under the FL Act and defer to federal police."*[57]

And Redfern Legal Centre noted that:

> *"It is our experience that the state or federal police will not enforce such an order, notwithstanding their capacity to do so under the legislation.""*[58]

Thus, practical limitations exist in the enforcement and effectiveness of Personal Protection Orders. Women experiencing family violence will likely need to attend the Magistrates' Court to obtain legal protection under an FVIO to increase the likelihood of police enforcing the order. This also means that Personal Protection Orders made under the FLA can operate alongside state-based FVIOs which "gives rise to the potential for inconsistencies between orders."[59]

To alleviate this jurisdictional gap, it has been recommended that Personal Protection Orders made in the FCFCoA should be "strengthened and given more substance" to have the same force and effect as FVIOs made in the Magistrates' Court.[60]

Implementation of this recommendation would give the FCFCoA similar powers to the FCWA, which has:

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[53] Family Law Act (n 2) s 68B(1).
[54] Ibid s 114.
[55] 'Family violence - Injunctions under the Family Law Act', *Fitzroy Legal Service* (Webpage, 1 July 2022) <https://fls.org.au/law-handbook-temp/relationships-families-and-young-people/family-violence/injunctions-under-the-family-law-act/>.
[56] Ibid.
[57] Ibid.
[58] Redfern Legal Centre, Submission No 36 to The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders (18 July 2024) 4.
[59] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 103.
[60] Redfern Legal Centre (n 57) 4.

> "…a limited power to make restraining orders pursuant to s63(2) of the *Restraining Orders Act 1997* (WA), which provides that a court hearing proceedings under the *Family Law Act 1975* (Cth) or the *Family Court Act 1997* (WA) may make a restraining order against a party to the proceedings, or any other person who gives evidence in the proceedings."[61]

However, limitations to this proposal also exist. For example, the prolonged nature of FCFCoA proceedings could mean that women must wait longer to get a protection order under the FLA, which is not appropriate in circumstances involving immediate risk.[62]

The Magistrates' Court also has the "relevant experience and focus on safety and provisional orders" and can apply FVIOs almost immediately upon being issued by police."[63] Further, the Magistrates' Court can make a final order if the applicant is a police officer even if the affected family member "has not consented to the making of the application."[64] Police also have the power to issue family violence safety notices under the FVPA before an intervention order application is heard in court. This includes conditions which the Respondent must immediately obey that are enforceable once it has been given to the Respondent by a police officer.[65]

It is for these reasons that the Magistrates' Court should remain the primary jurisdiction for the making of FVIOs, rather than empowering the FCFCoA to exercise this power.

Improved information sharing between courts

Increased information sharing between courts and jurisdictions has been consistently recommended as a mechanism to address the issues that arise in a fragmented family violence legal system. For example, in 2010, the ALRC recommended:

> *"Recommendation 30–16 Federal family courts, state and territory magistrates' courts, police, and relevant government agencies should develop protocols for the exchange of information in relation to family violence matters. Parties to such protocols should receive regular training to ensure that the arrangements are effectively implemented."*[66]

One of the benefits of improving information sharing between courts is that it shifts some of the burden on parties to gather information related to their proceedings and produce it to the court. This has the potential to alleviate some of the need for women to retell their story and regive evidence of family violence to a new court. It also ensures that relevant information is provided "to support effective and enhanced assessment and management of family violence risk" by courts.[67]

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[61] Family Court of Western Australia (n 12) 4.
[62] Women's Legal Service Australia (n 9) [48].
[63] Ibid [22].
[64] *Family Violence Protection Act 2008* (Vic) s 75(1).
[65] 'Family violence safety notices and intervention orders', *Victoria Police* (Web Page, 1 July 2021) <https://www.police.vic.gov.au/intervention-orders>.
[66] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 46.
[67] Victorian Government (n 15) 7.

Improved information sharing mechanisms between the Magistrates' Court and the FCFCoA has also been raised as a mechanism to assist Magistrates to invoke powers under section 68R of the FLA. At the Public Hearing for the Inquiry into Family Violence Orders on 30 August 2024, Trevor McKenna, Executive Member of the Family Law Section at the Law Council of Australia stated:

> *"It may be very hard for a Magistrate in a very busy court list, who's dealing with an abundance of family violence order applications, to then turn their mind to varying a parenting order in circumstances where they don't have before them the same information that the Federal Circuit and Family Court of Australia has."*

There are already existing information sharing frameworks in the FCFCoA - for example, through the co-location of state and territory child protection and policing officials in family law courts. This is intended to improve the timeliness and quality of information that is shared between the FCFCoA and state and territory agencies to assist in the identification and assessment of family safety risks.[68]

Further information sharing frameworks exist in the FCFCoA under sections 67ZBD and 67ZBE of the FLA. The FCFCoA can make an order requesting particulars, information and documents from state and territory police and child protection agencies which relate to abuse, neglect, family violence or risk.[69]

In Victoria, most of the existing information sharing schemes are between the courts and external agencies, such as the police and child protection. However, information sharing frameworks between the Magistrates' Court and the FCFCoA are less straightforward. As was noted by a lawyer at Women's Legal:

[68] Attorney-General's Department, *Evaluation of the Co-Location Pilot* (Report, March 2022) 3.
[69] Family Law Act (n 2) s 67ZBD, s 67ZBE.

> *"To rely on evidence tendered in the family law proceedings, such as a family report, orders for release of the report would need to be made by a judicial officer from the FCFCoA. If there are concurrent family law and family violence proceedings, it is possible to make an Application in a Proceeding to seek these orders. If the family law proceedings have been finalised, then arguably it becomes much harder to ventilate this issue."*

The nature and scope of previously made recommendations for increased information sharing between courts differ. For example, Women's Legal Services Australia and National Legal Aid have called for a national family violence risk information sharing scheme and register:

> *"Governments across federal, state and territory jurisdictions must implement a national risk information sharing scheme and register to increase transparency, accountability and information sharing across the sector. This could include a real time register of family court orders, family violence orders, and other relevant information regarding risk factors including child protection issues."*[70]

The FCFCoA and Magistrates' Court could look to the protocols for information sharing between the FCWA and the Magistrates' Court of Western Australia. These protocols provide for the exchange of information "between courts which share common clients."[71] Where a common client is established, the protocols permit the inspection of court records between the FCWA and the Magistrates' Court of WA, as well as a process for liaison between a family consultant and case manager from these respective courts.[72]

These protocols ensure that relevant information regarding safety and risk is shared in a timely manner between the two courts. It also removes the onus on parties of a proceeding to re-share this information with the court, which can often be distressing, confusing and retraumatising. As Women's Legal client Clara stated:

> *"I always had to repeat the evidence all the time… I would rather that be done by the court than having to repeat myself all the time. If you didn't have to be repeating yourself and the information you give in the first instance could be used and reused, I think that would help a lot of women, because it is pretty traumatic."*

There is an added risk for victim-survivors giving evidence in multiple proceedings, and that is the risk of them giving inconsistent or different accounts of what happened. Where this happens, the Respondent may try to use this to their advantage and try to undermine their credibility and reliability as a witness.

When discussing information sharing processes with a Victorian Magistrate, they emphasised the potential value of a scheme for sharing court orders between the FCFCoA and the Magistrates' Court:

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[70] Women's Legal Service Australia (n 9) [18].
[71] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 1444.
[72] Ibid.

> *"There are great benefits to the community where the FCFCoA and the State Magistrates' Courts work more effectively to ensure that there are no gaps in protection to those affected by family violence.* ***One example of such cooperation would be achieved by routinely providing copies of relevant orders relating to family violence and children, to the other court dealing with the same family in a timely fashion, recognising the urgent and volatile nature of many of these matters.*** *For example, the FCFCoA is often seized of a matter involving a family where the Magistrates' Court may have made a Family Violence Intervention Order; may have sentenced a parent who has breached that order; and may have suspended the orders made previously by the family courts, because there has been an assessment that it is no longer safe for that protected family member to comply with the parenting orders. [Providing the courts with] full knowledge of these matters ought not fall to parties, particularly protected persons, who are often self-represented in both courts, and may not have access to their orders so as to keep the family courts apprised of them."*

The benefits of a scheme that shares FCFCoA orders with the Magistrates' Court and vice versa is that it is simple and efficient. Orders are also made by an officer of the court and are therefore likely to be more impartial than documents filed by one party, or expert reports that cannot be tested in the family violence proceedings.

Further, the benefit of sharing court orders between courts is that it is simple and can be easily implemented. As was stated by one magistrate:

> *"From the perspective of a magistrate, it is preferrable that the Magistrates' Courts have timely access to parenting orders (and property orders, where relevant) which have been made by the FCFCoA. This could prompt proper inquiries being made with parties as to any risks associated with future child contact, so that the court could determine if such child contact should safely continue or orders be suspended, varied, discharged or revoked. Such matters could then return to the FCFCoA pending the parenting issues being ultimately redetermined by a family court while in the interim, the issues of risk ventilated (and addressed) by the Magistrates' Court in the immediate period and that is known to both courts.*

To implement a scheme such as this, the ALRC and NSW Law Reform Commission have suggested putting in place "information sharing protocols and memorandums of understanding (MOUs)"[73] between the courts to clarify and formalise what information can be shared, with whom, and in what circumstances.

It is therefore recommended that the FCFCoA and the Magistrates' Court of Victoria establish an information sharing scheme to share orders made in the Magistrates' Court and orders made in

[73] Ibid 1443.

the FCFCoA with each other. This could be implemented as a pilot program in Victoria, before being extended to other states and territories.

Limitations of the proposal to share court orders with the Magistrates' Court and the FCFCoA

Misidentification of predominant aggressors of family violence

A key limitation of the proposal to share court orders is the risk that the impact of the misidentification of victim-survivors as predominant aggressors of family violence could be exacerbated if this information were to flow on to different courts.

Whilst violence is a "highly gendered pattern of abuse"[74] perpetrated by men against women, it is also accepted that women can be perpetrators of family violence. However, misidentification of women as the *predominant* aggressors of family violence occurs in the context of women being arrested and/or listed as the Respondents on FVIOs for perpetrating violence, without taking into account factors that led to their violence, such as a "complex pattern of victimisation, trauma, and gendered structural disadvantage".[75] Thus, misidentification of women as primary aggressors of violence occurs when there is a failure to understand and respond to how these factors are closely tied to women's perpetration of violence.

Misidentification is best addressed at the earliest stages through improved police understanding of the dynamics of family violence and coercive control, and the contexts which contribute to women's victimisation.[76] Thus, education for police is essential in preventing misidentification from occurring in the first place during family violence callouts. This is especially poignant given that approximately 77% of civil protection orders are initiated by the police in Australia.[77] Further, Victoria Police "are called to one family violence incident every six minutes" and "arrest three perpetrators every hour."[78] Thus, there is an increased risk of women being misidentified as the primary aggressors of family violence in circumstances where police lack understanding of these factors.

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[74] Madeleine Ulbrick and Marianne Jago, *"Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria* (Policy Paper, July 2018) 1.
[75] Ellen Reeves, 'A Culture of Consent: Legal Practitioners' Experiences of Representing Women Who Have Been Misidentified as Predominant Aggressors on Family Violence Intervention Orders in Victoria, Australia' (2023) 31(1) *Feminist Legal Studies* 369, 372.
[76] Ulbrick and Jago (n 73) 5.
[77] Reeves (n 74) 369, 373.
[78] Lachlan Abbott, 'One call every six minutes: Family violence statistics the biggest concern for police' *The Age* (online, 20 June 2024) <https://www.theage.com.au/national/victoria/one-call-every-six-minutes-family-violence-statistics-the-biggest-concern-for-police-20240615-p5jm25.html>.

Secondary protective layers within the courts are also essential, such as primary perpetrator assessments, to ensure that a thorough risk assessment is conducted when these matters are in court.[79]

Misidentification can be difficult to later rectify and may have unintended consequences where FVIOs are resolved by the Respondent consenting without admissions to a final order:

> *"According to family violence specialist magistrates, where a female respondent has expressed intention to consent to an order – often under emotional duress in a pressured court setting – it is almost impossible for a magistrate to correct the police misidentification."*[80]

This raises concerns about what the flow on effects might be if final FVIOs that are made as a result of misidentification of the victim-survivor of family violence as the perpetrator are shared with the FCFCoA. For example, it could affect the FCFCoA's assessments of safety when seeking parenting arrangements if victim-survivors have been identified as the primary aggressor and had orders made against them in the Magistrates' Court, whether by consent or after a finding of fact.

Whilst misidentification in family law can be raised by parties in their affidavit and tested in evidence, it is an important issue to be mindful of in the future implementation of any information sharing scheme that shares orders between the FCFCoA and the Magistrates' Court.

To mitigate these effects, it is recommended that safeguards be put in place for victim-survivors who have been misidentified as predominant aggressors of family violence on FVIOs. For example, training for officers of the court on misidentification which can be led by cross-jurisdictional lawyers who have experience in both family law and family violence jurisdictions.

More broadly, awareness and education on the issue of misidentification across the family violence system must remain ongoing. The work of organisations such as No to Violence, Federation of Community Legal Centres, Victoria Legal Aid, InTouch, Law and Advocacy Centre for Women, Flat Out, Djirra, Victorian Aboriginal Legal Service, Family Safety Victoria, and Victoria Police to address this issue is recognised and commended.

Consideration should also be given to the potential resource and administration burdens that may arise from implementing a new information sharing scheme between the FCFCoA and the Magistrates' Court. However, it is argued that implementing a simple and effective information sharing scheme that is limited to sharing court orders has the potential to avoid future burdens to court resources.[81] For example, it allows this essential information to be readily available to judicial officers who are hearing the matter in question without relying on the parties to produce these

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[79] Silke Meyer, Nicola Helps, and Kate Fitz-Gibbon, *Domestic and family violence perpetrator screening and risk assessment: Current practice and future opportunities* (Report to the Criminology Research Advisory Council Grant, January 2023) 57.
[80] Ulbrick and Jago (n 73) 4.
[81] *Family Law Amendment (Information Sharing) Bill 2023* (Cth), Explanatory Memorandum [3].

documents, which may require an adjournment to allow them to do so. As a Victorian Magistrate stated:

> *"At present, the Magistrates' Courts commonly rely on parties to produce family law orders to the court. This often causes delay and not infrequently, parties provide the earlier versions of orders or orders that are in draft form. This does not assist the Magistrates' Courts to assess risk, as mandated under the FVPA. There is no reason why current parenting or property orders are not routinely available to a Magistrates' Court. The challenge of these information sharing deficiencies could easily be met by automation of some sort or reciprocal access to electronic court data bases by the other court."*

Thus, implementing a simple information scheme that shares orders between the FCFCoA and the Magistrates' Court is also a measure of streamlining an existing process of sharing orders between the courts that will in fact create efficiencies to existing delays that occur when each court attempts to retrieve this information.

Consent orders made in the FCFCoA

Further, the recommendation to implement an information sharing scheme that shares orders between the FCFCoA and the Magistrates' Court might be limited in circumstances where orders are entered into by consent. For example, if a party feels pressured to consent to a parenting arrangement it may lead to women "agreeing to orders that are not safe, suitable or reflective of the woman's legal entitlement."[82] Thus, whilst copies of parenting orders made in the FCFCoA may be useful for the Magistrates' Court to show what the current parenting arrangement is, understanding the context and fuller picture of the circumstances surrounding the parenting arrangement may be limited where it has been consented to by a party under pressure or without the testing of evidence by the FCFCoA.

This limitation is also relevant to FVIOs made in the Magistrates' Court. There is a "culture of consent in FVIO matters" that "has implications for the system's ability to meaningfully prioritise women's safety from family violence", particularly if the woman has been misidentified as the predominant aggressor.[83]

It is therefore important that judicial officers have awareness, training and understanding of the nuances that might exist between orders that are made by consent and orders that are made by judicial officer. This is especially important where there may be "a pattern of domination of one person over another [that] may result in a lack of protection for the true victim."[84] Establishing

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[82] Miranda Kaye, Tracey Booth and Jane Wangmann, 'Compromised 'consent' in Australian Family Law Proceedings' (2021) 35(1) *International journal of law, policy, and the family* 1, 25.
[83] Reeves (n 74) 382.
[84] Shellee Wakefield and Annabel Taylor, *Judicial education for domestic and family violence* (ANROWS Landscapes State of Knowledge Paper, June 2015) 19.

training for Magistrates to improve their understanding of family law processes and procedures could assist with this. This includes by extending their skillset in understanding the nuances and implications of an order that has been made after a final hearing and the testing of evidence, compared to an order that has been made by consent.

Recommendations

This research has discussed opportunities and limitations for the Magistrates' Court and the FCFCoA to exercise cross-jurisdictional powers. In light of the discussed limitations, it is recommended that an improved system for information sharing between the FCFCoA and the Magistrates' Court should be prioritised as a mechanism to address the fragmentation of legal systems that hear matters involving family violence.

An information sharing scheme that shares court orders between the Magistrates' Court and the FCFCoA is a contained and highly achievable change that can be implemented with far reaching impacts for women navigating these systems. Where judicial officers have information to hand – information as simple as a set of court orders – it can and will help improve this process.

This recommendation is not new and has been suggested in recommendations for law reform on this issue before, notably by the ALRC.[85] However, it is yet to be implemented.

In response to this recommendation, the Australian Government has stated that it "agrees with consideration of a technological platform to facilitate the sharing of court orders as recommended by the ALRC, with appropriate safeguards."[86] It has also implemented similar recommendations. For example, in 2024, the *Family Law Amendment (Information Sharing) Act 2023* was implemented to enhance the sharing of child abuse, neglect, and family violence risk information between the courts, child welfare agencies and police.[87]

However, there are currently no provisions to share court orders between the FCFCoA and state and territory Magistrates' Courts. The Australian Government has stated that it is "considering the best practical way to proceed, and whether the technological infrastructure that is being developed… is the most viable solution for the sharing of other court orders".[88]

It is recommended that an information sharing scheme such as a MOU between the FCFCoA and the Magistrates' Court could be implemented as a pilot program in Victoria to facilitate the prompt sharing of orders between the courts. Once this is implemented and evaluated in Victoria, there could then be scope to extend this scheme to other states and territories. This is in line with

[85] Australian Law Reform Commission and NSW Law Reform Commission (n 43) 44-45.
[86] Ibid 10.
[87] *Family Law Amendment (Information Sharing) Act 2023* (Cth).
[88] Australian Government (n 85) 10.

the Australian Government's previous response to this recommendation that it is "considering the best practical way to proceed… for the sharing of other court orders".[89]

Eventually, there is scope for this scheme to evolve into creating a national information sharing scheme, such as a real time register of family court orders, family violence orders, and other relevant information regarding risk factors in matters involving family violence.[90]

Conclusion

This research has highlighted some of the considerable burdens that women can presently bear in navigating multiple courts for overlapping legal matters where family violence is a fact-in-issue. Stories from Women's Legal clients have exemplified the fact that women can be required to retell similar evidence, face their perpetrator on multiple occasions, be required to organise things such as childcare and time off work, and relive traumatic experiences when attending court.

It has also looked to some of the apparent successes of other jurisdictions in navigating these burdens such as the IDV Courts in New York which have specially trained judges and court staff dedicated to hearing domestic violence cases.

In the absence of an integrated family violence legal system such as that seen in the IDV Courts, this research has canvassed a number of potential solutions to improve the cross-jurisdictional abilities of the FCFCoA and the Magistrates' Court in order to alleviate some of the burdens faced by victim-survivors.

An information sharing scheme that shares court orders between the FCFCoA and the Magistrates' Court is a simple, achievable and effective solution to this. This scheme essentially automates an already existing process between the FCFCoA and the Magistrates' Court where the onus is on the parties to produce previous court orders. It therefore alleviates some of the burden that exists on parties to gather this information and produce it to the courts. This in turn has the potential to alleviate the need for parties to repeat their evidence in a new court if the information can be garnered from an existing court order that is interpreted by a judicial officer.

The Australian Government has agreed with the consideration of a platform to facilitate the sharing of court orders, and this proposal has the potential to improve court efficiency and victim-survivor safety.

The current system is not prioritising the safety of women who have experienced family violence and improvements should be made in an effort to protect victim-survivors who are in the legal system. A simple, efficient and effective information sharing scheme between the FCFCoA and the Magistrates' Court that shares orders is an integral starting point to achieve this.

[89] Ibid.
[90] Ibid.

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