

women's legal  
service victoria

**SAFE + EQUAL**

## **Submission to Victorian Law Reform Commission**

Examining Aspects of Family Violence  
Intervention Orders for Children and  
Young Adults: *Stage 1 – Protection for  
children who turn 18 while on a Family  
Violence Intervention Order*

**17 April 2025**

Women's Legal Service Victoria & Safe and Equal

[www.womenslegal.org.au](http://www.womenslegal.org.au) | [www.safeandequal.org.au](http://www.safeandequal.org.au)

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## Acknowledgement of Country

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**Women's Legal Service Victoria and Safe and Equal work 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. We acknowledge the way Australia's colonial legal and justice system continues to harm Aboriginal and Torres Strait Islander women and children disproportionately. 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.**

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## About Women's Legal Service Victoria

**Women's Legal Service Victoria (Women's Legal) is a specialist, trauma-informed, state-wide for-purpose organisation that has been providing free specialist legal services to women since 1982. Informed by our intersectional feminist practice, we work with, and for, women and non-binary people to address legal issues arising from family and sexual 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. Our 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. We focus on women's safety, recovery from violence and economic security. We do this by:

- Providing legal advice and representation to women and non-binary people with a wraparound model of service delivery where they are 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 Safe and Equal

**At Safe and Equal, we work towards a world where everyone is safe, respected and thriving, living free from family and gender-based violence. We are the peak body for Victorian**

**organisations that specialise in family and gender-based violence across the continuum, including primary prevention, early intervention, response and recovery. We are an independent, non-government organisation.**

Our work prioritises the safety of all people experiencing, recovering from or at risk of family and gender-based violence. While we know that most family violence is perpetrated by men against women and children, we recognise that family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and other relationships. We apply an intersectional feminist lens in our work to address the gendered drivers of violence, and how these overlap and intersect with additional forms of violence, oppression and inequality. As a peak, we work with and for our members to prevent and respond to violence, building a better future for adults, children and young people experiencing, at risk of, or recovering from family and gender-based violence.

## Foundations of our Submission

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**Our submission is based on Women's Legal's practice experience in matters involving family violence and Safe and Equal's expertise as the peak body for Victorian organisations that specialise in family and gender-based violence across the continuum. The submission includes the expertise of survivor advocates, legal practitioners, and social workers, as well as evidence drawn from the research literature.**

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Women's Legal puts women and non-binary people – individually and collectively – at the centre of everything we do. We work with our clients to achieve optimal legal and wellbeing outcomes, and we integrate what we learn into our systems change and law reform advocacy to put forward well-informed systemic and structural solutions that will improve the safety and wellbeing of women and non-binary people, and their children, to help eliminate gendered violence.

In the 2024 financial year, 2,884 clients benefited from Women's Legal's free legal help, with 30% receiving social work support and 12% receiving financial counselling support alongside their legal support. The clients we worked with faced many barriers, with 68% experiencing economic disadvantage, 23% reporting having a disability, and a quarter either at risk of or experiencing homelessness. Just over half of the clients we work with have children.

Women's Legal and Safe and Equal are deeply committed to advocating for change that is informed by lived experience. As such, client stories are shared in the submission. The stories are included with client consent and have been de-identified to protect the safety and privacy of all persons concerned. We employ a variety of de-identification techniques to meet our legal obligations and ensure client stories are useful to decision-makers. We acknowledge the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who have not survived and acknowledge the lasting impacts of this preventable violence on families and communities.

### **Endorsement**

This submission has been endorsed by:

- Westjustice, a community organisation that provides free legal help to people in the Western suburbs of Melbourne.

The logo for Westjustice, featuring the word "Westjustice" in a bold, sans-serif font. The "West" is in black and the "justice" is in red. A vertical line is positioned to the left of the text.

### **Contact us**

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## Executive Summary

Family violence intervention orders (FVIOs) are a critical legal tool to protect victim-survivors of family violence. Children and young people are often profoundly affected by family violence – either as direct targets of abuse or through exposure. Children who experience or witness family violence must be appropriately recognised by justice and support systems as victim-survivors, with unique needs for protection and participation. At the same time, as acknowledged by the Victorian Law Reform Commission in Issues Paper 1, it can be traumatic for children to be involved in court processes, which must be handled with care.

Legislative reforms are needed to clarify that a magistrate can make orders listing a child or young person as a protected person that continue past the time that person turns 18 years of age, and that orders extending beyond a young person's 18<sup>th</sup> birthday continue to be valid and enforceable when they are contravened. We know that the risk of family violence does not end when a young person reaches legal adulthood.<sup>1</sup> Orders that arbitrarily end when a young person turns 18 place an unfair burden on that young person to seek their own protection of the law.

However, where a magistrate is considering making orders that either end on, or extend beyond a young person's 18<sup>th</sup> birthday, we strongly recommend that the young person be given the option to be referred for independent, trauma-informed and culturally appropriate advice and assistance from a lawyer and social worker. While Victoria's framework acknowledges children as victim-survivors of family violence and provides for their inclusion on FVIOs, it also imposes limits on direct involvement in proceedings, and there are limited opportunities for children's voices to be heard. Integrated support, advice and assistance from a lawyer and social worker can empower the young person to express their wishes as to the duration of the order, understand the implications of being included, or not included, on an order, and for risk assessment and safety planning to take place. This would also allow that young person to be referred to any relevant therapeutic supports that may be needed to aid in their recovery.

We recommend that any legislative or system reforms be accompanied by adequate resourcing for specialist frontline services, and capability development to better equip professionals working in the legal and justice systems to provide age-appropriate, trauma-informed and culturally appropriate support.

<sup>1</sup> While the majority of Women's Legal's matters involve parents and children, we emphasise that family violence can be perpetrated by other family members against children, and the duration of orders is still a very live issue for those matters (for example, child sexual abuse perpetrated by a grandparent or other related family member against a child).

# Recommendations

## Recommendation 1

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The *Family Violence Protection Act 2008* should be amended to explicitly clarify that FVIOs listing children/young people as protected persons can be made to extend beyond a child or young person's 18th birthday. Whilst the court should continue to have the discretion to make orders that end before, end on, or extend beyond a child or young person's 18th birthday, legislative amendments should give certainty that where orders are made that do extend beyond a child's 18th birthday, the orders continue to be valid and enforceable when they are contravened.

## Recommendation 2

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Consideration should be given to simpler, streamlined processes to allow a young person to remove themselves from being listed as a protected person on a FVIO when they turn 18 years of age, with an application to revoke. These simpler processes should apply for young people aged 18-25 years of age.

## Recommendation 3

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Where a child or young person is no longer listed as a protected person on an FVIO from the time they turn 18, yet the order remains in place for the applicant and/or any other protected persons (either because a magistrate has made that specification as to duration or where the young person chooses to remove themselves from the order) there should be the option to reinstate the order if this is needed or wanted by young person at a later date without further proceedings and the trauma of returning to court – based on the original application and its evidence. These simpler processes should apply for young people aged 18-25 years of age.

## Recommendation 4

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Where a magistrate is considering making orders that extend up until, or beyond a young person's 18<sup>th</sup> birthday, the matter should be adjourned and the child or young person should be given the option to be referred to an independent, appropriately skilled and qualified lawyer and social worker for information, advice and assistance prior to final orders being made.

The lawyer and social worker could interview the child or young person and report their wishes as to duration, as well as any risks or safety considerations, to the court, to be included as a factor for consideration in the making of final orders.

## Recommendation 5

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Government must dedicate sufficient resources to ensure the availability of appropriately skilled and qualified lawyers with experience in providing legal assistance to children and young people in family violence matters, with an emphasis on ensuring availability in rural, regional and remote areas. Boosting the capacity and capability of existing services where there is already significant expertise should be prioritised.

**Recommendation 6**

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Legislative and system reforms should address inconsistent approaches between courts to the consideration and weight given to children and young people's views.

**Recommendation 7**

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Government should consult with relevant stakeholders on how the Victims Charter could be amended to specifically reference the rights of children as victims of crime to access information about FVIOs where they have been or are listed as protected persons, and the development of a notification scheme in relation to FVIOs.

**Recommendation 8**

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Government must dedicate resources to ensure that free, tailored, trauma-informed, and culturally appropriate legal assistance, as well as wrap-around and therapeutic support, is available to support children and young people who have experienced family violence, and their parents, to navigate complex legal system processes. Prioritisation should be given to service availability in rural, regional and remote areas across Victoria, and for young people living with disability.

**Recommendation 9**

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System wide capability development is required to ensure professionals working within the legal and justice systems, including lawyers, court staff, magistrates and family violence workers, have the skills and knowledge necessary to support children and young people in a trauma informed and culturally appropriate way.

**Recommendation 10**

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Any reforms must include consultation with those with lived experience, to ensure that they meet the needs of those most affected and any unintended impacts can be understood and accounted for.



## Our views on options for reform

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**Consultation question: Do you think the law should say explicitly that children automatically continue to be protected by a FVIO for the length of the order even if they turn 18 unless the court finds that there is a good reason not to do this?**

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### **Clarification needed in the *Family Violence Protection Act 2008***

There is currently an inconsistent application of the law as it relates to the duration of FVIOs that list children and young people as protected persons (outlined further below). We recommend that the *Family Violence Protection Act 2008* (FVPA) be amended to explicitly clarify that FVIOs listing children/young people as protected persons can be made to extend beyond a child or young person's 18<sup>th</sup> birthday. Whilst the court should continue to have the discretion to make orders that end before, end on, or extend beyond a child or young person's 18<sup>th</sup> birthday, legislative amendments should require the court to:

- Seek the child or young person's views as to the duration of the orders and
- To give certainty that where orders are made that do extend beyond a child's 18<sup>th</sup> birthday, the orders continue to be valid and enforceable if contravened.

Where a magistrate is considering making an order that either ends on, or extends beyond a child or young person's 18<sup>th</sup> birthday, the legislation should require that the magistrate should adjourn the matter and that child or young person should be given the option to be referred for independent legal assistance/support from an appropriately qualified and trauma-aware lawyer and social worker to seek their views about the duration of the order and for information, advice and assistance before final orders are made. The lawyer and/ or social worker could interview the child or young person and report their wishes and any risks or safety considerations to the court, to be included as a factor for consideration in the making of final orders. This recommendation is considered in further detail below.

Agency should be given to a young person who reaches the age of 18 during the lifetime of a FVIO in relation to:

- Whether the FVIO is revoked as it relates to them;
- Varied into a standalone order with tailored protection for the young person; or
- Continues its protection in the same terms for the duration of the FVIO irrespective of the age of the protected person given they were a child at the making of it.

Consideration should also be given to a simpler process for variations and revocations of FVIOs when a child turns 18 during a specified period (for example, until the age of 25) where the young person can effectively have themselves taken off the order as a protected person. Some young people may wish to explore a relationship with the respondent parent at this stage of life and simpler processes would enable this to occur. We also note that teenagers and young people are

more likely to 'vote with their feet' if they wish to explore a relationship with a parent notwithstanding the existence of orders. Processes that support a young person in making decisions about their lives and relationships, considering risk and safety, are likely to lead to better outcomes. Where Police are the original applicant for an FVIO, the provisions in s 75 of the FVPA would still apply, so that limited conditions in an FVIO (as per s 81(2)) could be made for a young person even if they had made an application to revoke (meaning that some safeguards can still remain in place).

However, where a child or young person is no longer listed as a protected person on an FVIO from the time they turn 18 because it has lapsed, or the order remains in place for the applicant and any other protected persons (either because a magistrate has made that specification as to duration or where the young person chooses to remove themselves from the order), there should be the option to reinstate the order if this is needed or wanted by the young person at a later date without further proceedings and the trauma of returning to court - based on the original application and its evidence.

These simpler, streamlined processes should apply to young people aged 18 – 25 in recognition of this cohort's circumstances and life stages, and noting evidence shows that development continues until 25.<sup>2</sup> We know that many young people are still dependent on their parent or guardian at the age of 18, and concepts around the age of dependency are varied across government and other systems. The Department of Families, Fairness and Housing's Better Futures program, for example, supports young people who are making the transition from care to adulthood until they reach the age of 21. Services Australia assumes that young people under 21 years old are dependent unless certain circumstances are met. The Australian Taxation Office considers a dependent child to be a child under 21 years old, or 21 to 24 years old and a full-time student at a school, college or university. We know that many 18-year-olds are still in high school, and many are still living at home. Arbitrarily requiring an 18-year-old to navigate the complexities of the family violence system independently once they turn 18 is inconsistent with the realities of young people at this stage of life. Simpler, streamlined processes that allow a young person to elect to be reinstated as a protected person on a protective parent's order would go some way to addressing this, improve safety outcomes for this cohort, and enhance access to justice.

### **Potential for unforeseen consequences**

Whilst legislative change has the potential to exacerbate the injustice experienced by adult respondents who have been misidentified as the primary aggressor (including Aboriginal and Torres Strait Islander women and culturally and racially marginalised women), we note the critical ongoing work in relation to preventing, detecting and rectifying misidentification. We expect that any misidentification should be rectified by final orders stage.

We further note that where vexatious applications for FVIOs are made by a person using violence (as a form of systems abuse) and children have been removed from a victim-survivor's care because of that systems abuse and potential alienation, extending orders beyond a child or young person's birthday would likely exacerbate the impacts for the victim-survivor. Efforts to

<sup>2</sup> Jesuit Social Services, 'All Alone: Young adults in the Victorian justice system', 2018, p. 10. Available at: [All-alone-Young-adults-in-the-Victorian-justice-system-FINAL-1.pdf](#)

prevent, detect and combat systems abuse in jurisdictions hearing matters involving family violence must be prioritised moving forward.

Legislative amendments to clarify the court's powers regarding order duration, which are not complemented by reforms to ensure children and young people's voices are heard in the making of those orders, or legislative amendments to automatically extend orders, risk several unforeseen consequences. Children and young people should have voice in relation to their safety. Orders made without their input may not align with, respect, or serve the young person's wishes -with implications for safety planning and compliance with those orders. An example is where a child or young person does not support orders extending beyond their 18th birthday due to a need for housing, where the respondent's home is their only option (for example on exiting the child protection system) and the existence of the orders would mean they are at risk of homelessness.

## **Recommendations**

### **Recommendation 1**

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The *Family Violence Protection Act 2008* should be amended to explicitly clarify that FVIOs listing children/young people as protected persons can be made to extend beyond a child or young person's 18th birthday. Whilst the court should continue to have the discretion to make orders that end before, end on, or extend beyond a child or young person's 18th birthday, legislative amendments should give certainty that where orders are made that do extend beyond a child's 18th birthday, the orders continue to be valid and enforceable.

### **Recommendation 2**

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Consideration should be given to simpler, streamlined processes to allow a young person to remove themselves from being listed as a protected person on a FVIO when they turn 18 years of age. These simpler processes should apply for young people aged 18-25 years of age.

### **Recommendation 3**

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Where a child or young person is no longer listed as a protected person on an FVIO from the time they turn 18, yet the order remains in place for the applicant and/or any other protected persons (either because a magistrate has made that specification as to duration or where the young person chooses to remove themselves from the order) there should be the option to reinstate the order if this is needed or wanted by a young person at a later date without further proceedings and the trauma of returning to court - based on the original application and its evidence. These simpler processes should apply for young people aged 18-25 years of age.

## Current application of the law

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**Consultation question: Are you aware of situations where children/young adults have been advised/found out that the FVIO made for their protection ended or would end on their 18th birthday?**

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At Women's Legal, about half (52 per cent<sup>3</sup>) of the clients we assist have children. Our lawyers assist clients with FVIO matters where children are listed as protected persons every day. Currently, there is inconsistent practice in the Magistrates Court in relation to making orders that list a child or young person as a protected person that end on or extend beyond their 18<sup>th</sup> birthday. We see examples of both situations in our practice. Whether an order will be made that extends beyond a young person's 18<sup>th</sup> birthday is dependent on the magistrate and the circumstances.

Some examples of the varied approaches taken by the court to order duration where children are listed as protected persons include:

- Indefinite FVIOs in circumstances where there has been serious family violence which can be specified as continuing until further order, meaning no end date.
- FVIOs that extend up until a child's 18<sup>th</sup> birthday (for example where an application for an FVIO is made when the child is 5 years old, and the order made extends up until the child's 18<sup>th</sup> birthday – a duration of 13 years). We see these orders frequently made to manage risk whilst the parents are required to have ongoing contact to facilitate family law parenting arrangements.
- FVIOs that end on the child's 18<sup>th</sup> birthday where the magistrate does not believe they have the power to, or are unwilling to, make orders that extend beyond the young person's 18<sup>th</sup> birthday.
- FVIOs (or extensions) where the duration extends beyond a young person's 18<sup>th</sup> birthday (for example, until the young person is 21 years of age). Recent examples include FVIO extensions beyond the young person's 18<sup>th</sup> birthday where the respondent has breached the orders, and the young person has given a statement to police in relation to the breach.

Our lawyers have provided the following examples of factors they consider when advocating to the court about FVIO duration:

- The client's instructions and what the client wants.
- The gravity of the family violence.
- Future family violence risk or temporary risks factors such as pregnancy.

<sup>3</sup> Data collected between January and October 2024

- Whether any other legal proceedings are on foot or have been finalised (such as family law proceedings) where there are specific orders in place for the child to spend time or have contact with the respondent.
- The age of the children.
- Any history of offending.
- If there are any other IVOs.
- The history and duration of the relationship.
- Evidence provided by expert witnesses.
- The extent to which the applicant and the respondent will be required to have contact about child/parenting arrangements (to manage risk involved in facilitating contact with children).

In general, our lawyers do not advocate for different durations for applicant AFMs, and children listed as protected persons (they more frequently advocate for different conditions if that is appropriate or sought by the client).

### **Factors the courts consider when determining the duration of FVIOs that list children and young adults as protected persons**

In FVIO matters the court does not generally give reasons for the duration of the order. Factors they may consider in determining duration include:

- The allegations of family violence and their gravity.
- Future risk.
- Other orders that don't allow for contact between a parent and a child ('reading between the lines' of parenting orders made in the family law jurisdiction and the risk assessment made in that jurisdiction).
- The need for parents to have ongoing contact to facilitate family law parenting arrangements, or any other related legal proceedings involving the parents.
- A view that FVIO duration should align with the duration of family law parenting orders or child protection orders.
- A view that when the child is 18, they can make their own application for a FVIO.
- Some magistrates appear uncertain about whether they have the power or whether the law is settled as to their ability to make orders that extend beyond the child's 18<sup>th</sup> birthday.

In our experience, the views of children and young people themselves are very infrequently and inconsistently sought by the court (noting that the court is making a risk-based assessment and safety is the primary concern).

In the absence of clear direction in the legislation, there will continue to be different interpretations and varied outcomes in relation to the duration of FVIOs that list children and young people as protected persons.

**Anita and Sally's Story\***

Anita sought an extension for her FVIO after the father of her child breached the terms of the order by contacting their teenage daughter Sally.

Anita sought an extension to her FVIO, stemming from a breach of those orders where the respondent father had approached and contacted Sally in contravention of the order. Police were supportive of the application to extend, and a police statement was made by Sally (which included Sally's views that were supportive of the extension). This was able to be introduced as evidence. The matter was still adjourned so that Sally could come to Court because if extended, the FVIO would expire after Sally turned 18 years of age. Sally didn't want to come to court –she already felt traumatised by the system. In this case, the magistrate reluctantly extended the order for five years which went beyond Sally's 18<sup>th</sup> birthday. However, in doing so, the magistrate said the law was not settled. In this case the respondent agreed to the extension. Without this consent, the magistrate may not have been minded to agree with the extension request.

*\*not their real names*

**Communicating with children and young people about orders that list them as protected persons**

There is no consistent approach within the family violence system that ensures children and young people are aware of the orders that list them as protected persons, or the duration of those orders.

Examples of situations where children and young people are made aware of the orders on which they are listed include:

- The child or young person may be informed by Child Protection, for example, where contact with a parent is prohibited.
- The child or young person may be told about the orders, conditions and duration of orders by the AFM (for example, to facilitate safety planning).
- The child or young person may become aware of the order where the respondent has breached the order, and the child or young person has had to make a statement to police about that breach.
- Where the respondent parent has told the child about the order (for example, "your mum's taken an order out against me, and so I can't see you / come to your sports game/school assembly/ etc).

It is our experience that most frequently, children and young people are not made aware of the orders where they are listed as protected persons. One reason for this can be that the AFM (mum) is trying to minimise what she is talking about to the children, because involving the children too much in the FVIO matter could be used by the respondent parent as evidence that mum is

alienating the kids in a concurrent or subsequent family law parenting matter in the Federal Circuit and Family Court of Australia (FCFCOA). For this reason, any system reforms to improve communication with children and young people need to be considered carefully and proper consideration given to the child's involvement and participation in all related legal matters, such as family law and child protection proceedings. The ability to be involved and obtain independent legal representation in these jurisdictions is significantly different, with best interests representation provided in the FCFCOA under s 68L of the *Family Law Act 1975* (Cth) and on direct instructions for children over the age of ten years in the Children's Court under s 524 of the *Children Youth and Families Act 2005* (Vic). In the FVPA a child that is not an applicant or respondent, can only be represented legally if the Court grants leave under s 62. The applicant AFM mustn't be burdened with prescriptive requirements in this regard, noting the implications this may have in family law parenting matters (including allegations of parental alienation).

As a general principle, young people who are listed as a protected person do not receive a copy of the order. This has the potential impact of reducing safety and can mean that they are unaware:

- They are listed as a protected person on an order, and
- That the order has a specific duration.

Sometimes a signed authority is required by that child asking the court for a copy of an order where they are listed as a protected person. The paperwork and processes involved can be complex and daunting requiring legal assistance. We further note that legal assistance services are not information sharing entities under the Child Information Sharing Scheme, Family Violence Information Sharing Scheme or MARAM.

An improved, coordinated system response is required for communicating with children and young people about the orders on which they are listed. This is important for safety, to manage risk and protect the agency of the child or young person.

### **Information for young people when they are listed as protected persons**

As discussed above, young people may not be aware of the details of orders on which they have been listed as a protected person, including details about the date on which the FVIO lapses. The protective parent may not have informed the young person about the existence of the orders, and the young person is unlikely to have been engaged in the court process at the time the orders were made. There is currently no systemic approach to communicating with applicants or protected persons in relation to orders that are due to lapse generally – the onus is on the applicant or protected person to take any further action they require for their safety before the order's expiry. Given young people may be unaware of the orders and/or any process to seek the ongoing protection of an order where there is no current FVIO, consideration should also be given to a notification scheme that advises young people:

- That the FVIO on which they are listed as a protected person will imminently lapse.
- How they can seek a copy of the original application and any current/ lapsed FVIO.
- What their options are, should they wish to continue to have the protection of an FVIO.



- Where they can seek assistance (including legal assistance to extend an FVIO or to seek their own FVIO; victims of crime assistance; or other support).

There could be opportunities to integrate any reforms within the Victims Charter to clarify and enhance the rights of children as victims of crime. We note that the Victims Charter is currently being reviewed and there is an opportunity to clarify and enhance the rights of children in the Victims Charter to access information about FVIOs where they are protected persons together with other information about the services, entitlements and assistance available to them as victims of crime. Noting the significant resources that would likely be necessary to establish any notification scheme and its integration with other systems, appropriate consultation with the relevant stakeholders, including the court, Police, Victims of Crime Commissioner and other justice agencies would be required.

### **Risk and safety considerations for children and young people who are listed as protected persons**

Risk and safety considerations for children and young people who are listed as protected persons on an order that expires on their 18<sup>th</sup> birthday include:

- The respondent parent may see the expiry of orders as an opportunity to re-engage with the AFM and any protected persons listed on the order. A commonly held view that we see by the person using violence is that once the child reaches the age of 18, they can have contact with them. When that young person may not have wanted contact as a child and may hold those same views as an adult.
- The young person may wish to explore a relationship with the respondent parent but be unaware of previous family violence and potential for future risk.
- The young person may be unaware of the existence of the orders or that they need to apply for their own orders.
- The young person, given their age, capacity and stage of life, may not proactively seek new orders for themselves.
- The young person may not wish to seek their own orders against a respondent parent, given the inherent power imbalance in the parent-child relationship.
- A child or young person may be unable to access legal assistance in relation to seeking their own orders due to chronic underfunding of legal assistance and eligibility requirements – this is even more challenging in outer metropolitan and regional areas.
- The young person may not wish to ‘poke the bear’ by seeking their orders against the respondent upon turning 18 and may feel that this process may elevate risk.
- Where the young person does seek new orders for themselves, there may not be sufficient evidence of recent family violence and/or future risk for the magistrate to consider that the legislative threshold under s 74(1) has been reached – i.e. that the respondent has committed family violence against the child/ young person, and is likely to do so again (if the previous order has been complied with and/or no contraventions have been prosecuted). This may cause significant concern and anxiety for the young person. If their application is unsuccessful on the first return, this negative experience may cause the



young person to lose confidence in the system and mean that they won't again seek protection of the law when they need it.

It may also be the case that the young person, upon turning 18, wishes to explore a relationship with the respondent parent. In these circumstances, the young person should be appropriately informed and supported to prioritise their safety and to manage risk whilst trying to re-establish any relationship.

### **The need for independent advice, assistance and support for children who are listed as protected persons**

While engaging in legal processes without adequate support has the potential to be traumatic and even harmful, the need to protect children from this harm needs to be balanced against them having the opportunity to participate in decisions that profoundly affect their lives. Where a magistrate is considering making an FVIO that lists the child as a protected person that either:

- ends on a child's 18<sup>th</sup> birthday, or
- extends beyond their 18<sup>th</sup> birthday,

it is our strong recommendation that the matter should be adjourned, and the child or young person should be referred to independent, integrated legal and social work assistance and advice before final orders are made.

Article 12 of the United Nations Convention on the Rights of the Child asserts that a child has a right to express their views freely in all matters affecting them, and for those views to be given due weight in accordance with the child's age and maturity.<sup>4</sup> In the context of FVIOs, the matters involved (safety, living arrangements, contact with family members) undoubtedly affect the child or young person. From a rights-based perspective, children and young people should have the opportunity to be heard in these proceedings, and for their feelings, fears, and preferences to inform the court's decision-making regarding order duration.

The importance of ensuring children have a voice in legal proceedings that affect them is supported in the research literature. For example, a key finding in the Australian Institute of Family Studies' (AIFS') research report 'Children and young people in separated families: Family law system experiences and needs'<sup>5</sup> was "the significance to children and young people of having 'someone' to listen to and then communicate their views so that their views could inform decision making in their case". Research shows that the benefits of ensuring children and young people are heard include:

- When children contribute to the decision-making process, it fosters trust in the system and often results in more informed and appropriate decisions that better reflect children's needs and best interests.
- Decisions made with children's input are more likely to succeed and promote healthier family dynamics.

<sup>4</sup> David Mandel, '[Ensuring the Voice of the Child is Heard, and Child's Best Interests are Central in Domestic Violence Cases](#)' (Policy Paper, Safe & Together Institute, 2024)

<sup>5</sup> Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018). [Children and young people in separated families: Family law system experiences and needs](#). Melbourne: Australian Institute of Family Studies.

- Feeling respected and included enhances children's self-esteem and emotional well-being, while being ignored can lead to feelings of devaluation.<sup>6</sup>

While research has primarily been focussed on children and young people's participation in the family law jurisdiction, the findings have important implications for the family violence jurisdiction in Victoria.

At the same time, we know that exposing children and young people to the court environment and/or conflict can be deeply unsettling and traumatising. We know that family violence already profoundly impacts children and that significant power imbalances are at play. Requiring them to participate in court processes, or to be in the court with the perpetrator nearby, can compound this. Younger children or those with limited capacity may not fully understand the implications of court orders or may say what they think others want to hear. Developmentally, children's desires can change over time and may be influenced by fear or guilt. For example, a child might initially resist seeing an abusive parent (expressing they want no contact), but later, as they near the age of 18, they might change their mind and decide they would like to explore a relationship with a parent. The legal system must be adaptable to these changes without making the child feel responsible for outcomes or that they have to manage their safety alone.

In order to facilitate children's involvement in FVIO proceedings, consideration must be given to what is appropriate to the child's age, comfort and circumstances. For example, young adults may feel a strong need for agency in securing their own safety and desire more direct participation. Crucially, participation should be at the young person's choice as much as possible – and for this reason it must be made clear that magistrates do have the power to make orders that extend beyond a young person's 18<sup>th</sup> birthday without requiring their direct involvement in proceedings (but giving the child agency to provide their views as to duration via a lawyer). Where a child does not wish to participate and Police or a family member have applied for an FVIO, the applicant should be able to request that orders be made for the child that extends beyond their 18<sup>th</sup> birthday. Noting that these decisions and orders are not irrevocable, and that the young person can make an application to vary or revoke the FVIO if they wanted to resume contact with the respondent as an adult.

In the family law jurisdiction, AIFS has suggested a child-inclusive approach that:

- Enables the relevant children and young people to contribute to, and be accurately heard in, the decision-making process and to be kept independently informed of the nature and progress of the decision-making process.
- Provides a clear and accurate explanation of the decision made.
- Provides access to ongoing therapeutic support and assistance as required.
- Accommodates the potential for flexibility to change and for ongoing and meaningful communication.<sup>7</sup>

The FVPA acknowledges that preventing family violence is best achieved when the safety of children is a priority. Acknowledging that children and young people should have a voice when it comes to their safety, the legislation should require that where a child is affected by proceedings,

<sup>6</sup> Dimopoulos, G., Hew, E., Vosz, M. and Walsh, H. (2025), 'Talk to Us, Not About Us': Children's Understandings and Experiences of Participation in Australian Family Law. *Child & Family Social Work*. <https://doi.org/10.1111/cfs.13275>

<sup>7</sup> Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018). *Children and young people in separated families: Family law system experiences and needs*. Melbourne: Australian Institute of Family Studies.

they should be offered legal representation where it is consistent with their age, maturity and capacity – this would signal to courts the importance of considering child participation.

Specialist lawyers and social workers are well-equipped to facilitate children and young people's participation in proceedings in a trauma-informed and age-appropriate way. It is our view that where a magistrate is considering making orders that extend up until or beyond a young person's 18<sup>th</sup> birthday, the matter should be adjourned, and that child or young person should be given the option to provide their views about the duration of the orders to the court. The child or young person should then be referred to an independent, appropriately skilled and qualified lawyer and social worker for information, advice and assistance prior to final orders being made. Consideration would need to be given to a minimum age for this process following extensive consultation with relevant stakeholders.

If the child or young person elects to provide their view as to duration to the court, the lawyer and social worker could interview the child or young person and report their wishes and any risks or safety considerations to the court, to be included as a factor for consideration in the making of final orders.

A referral in this way would provide the child or young person with an opportunity to have agency in matters that profoundly impact them, and would also provide important additional opportunities for the child or young person to:

- **Be given information and advice about what will happen when the orders expire and their options.** For example, if an order is to expire on a young person's 18<sup>th</sup> birthday, they can be given information and advice about their options for seeking orders in their own right, should they wish to do so.
- **Be given information about what constitutes family violence.** This is an educative opportunity to support children and young people to understand the range of behaviours that constitute family violence and empower them to make decisions about their safety and future relationships.
- **Enable discussions about risk and safety.** A child who feels heard is more likely to trust and engage with safety measures. They are also more likely to disclose if something isn't working, which can lead to timely variations of orders. Conversely, a child who feels ignored might rebel against an order (for example, secretly contacting a respondent parent because they weren't consulted and don't understand the rationale).
- **Enable additional referrals to therapeutic support such as counselling.** While children can be incredibly resilient, the impacts of family violence can have long-term consequences for their friendships and relationships, as well as participation in social and civic life. Evidence demonstrates that family violence can have a lasting and significant impact on infants (including in utero), children, and young people. They can be impacted whether they are directly targeted with abuse, they witness abuse or violence towards their parent or carer, or they are exposed to the effects of family violence in their environment. Direct and indirect exposure to family violence can have severe, long-term impacts on the physical, spiritual, psychological, developmental, and emotional safety and wellbeing of children and young people. A referral to a lawyer and social worker skilled at working with children and young people in a trauma-informed way provides an opportunity for them to be linked in with additional services they need to recover from

family violence as victim-survivors in their own right. This must be backed by ensuring the family violence system is appropriately resourced to ensure services are available: as the Family Violence Reform Implementation Monitor has noted, there is considerable concern 'that there is insufficient and inconsistent availability of therapeutic supports for children'.<sup>8</sup> Referral to therapeutic support should be done on an as needs basis – noting that the young person may already be receiving support. We note that there is a risk that a respondent that is the child's parent, may withhold consent to therapeutic treatment in some cases.

Consideration could be given to extending the role of family violence practitioners at court who engage with affected parties to provide support to children and young people in appropriate cases (noting capability development would likely be required, including training for applicant support workers). Considering the demand for these practitioners is already high, and to manage confidentiality, additional roles should be created specifically for children and young people.

The FVPA should reflect that children should have a voice about their own safety and should be engaged with in a developmentally appropriate, compassionate way where the length of an FVIO is in issue. Legislative reform to the FVPA should facilitate the court's ability to, so far as practicable, ensure that the child's views are ascertained and considered (considering the child's age and maturity) and that measures are in place to protect the child from unnecessary distress during the proceedings (including provisions to require the court to adjourn and refer the child/young person to legal and social work assistance and advice). This would balance a child's participation in proceedings while giving the magistrate tools to achieve both aims.

### **Availability of appropriately skilled lawyers and social workers**

The provision of legal assistance and advice for children and young people as recommended in this submission should not be done by existing duty lawyer services already stretched beyond capacity. We would also not consider it to be a trauma-informed approach for this support to occur on the day of proceedings or in the court setting. For this reason, we recommend an adjournment and referral to legal support with appropriately skilled and qualified lawyers with experience in providing legal assistance to children and young people (such as Youthlaw and School Lawyers) prior to the making of final orders. Noting that, if adopted, these measures would only apply to a discrete subset of matters where orders are being considered that would run up until or beyond a young person's 18<sup>th</sup> birthday, appropriate resourcing must be dedicated to ensuring the availability of services, including for rural, regional and remote areas. We recommend building the capability of existing services where there is already significant expertise, rather than establishing a new scheme.

### **Inconsistent approaches between intersecting systems and jurisdictions**

We frequently see clients seeking legal protection from family violence finding themselves in multiple courts and jurisdictions within a system that is "complex and confusing and may be too hard to navigate."<sup>9</sup> There are currently significant differences in approach between intersecting

<sup>8</sup> Family Violence Reform Implementation Monitor, 'Maintaining momentum: What remains to be done?', November 2020. Available at: [Maintaining momentum: What remains to be done? | fvrim.vic.gov.au](https://www.fvrim.vic.gov.au)

<sup>9</sup> 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.

systems and jurisdictions that deal with family violence in relation to the consideration of children and young people's views. This can confuse our clients, particularly those whose matters span multiple jurisdictions. For example, in our experience, magistrates are unlikely to want to hear from young children in the Magistrates Court. This contrasts with matters where an FVIO is abridged to child protection proceedings in the Children's Court where children above the age of 10 get a direct instructions lawyer and those younger get an Independent Children's Lawyer. In the family law jurisdiction, children and young people do have a voice but they are represented by an Independent Children's Lawyer that is appointed to act in their best interests and not on direct instructions. Representation is also not provided in all cases, with an Independent Children's Lawyer only being appointed by the Court where it determines that it is in the child's best interests that they be separately represented. We recommend any legislative and system reforms address this inconsistency to improve access to justice, remove confusion, and reflect best practice.

## **Recommendations**

### **Recommendation 4**

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Where a magistrate is considering making orders that extend up until, or beyond a young person's 18<sup>th</sup> birthday, the matter should be adjourned and the child or young person should be given the option to be referred to an independent, appropriately skilled and qualified lawyer and social worker for information, advice and assistance prior to final orders being made.

The lawyer and social worker could interview the child or young person and report their wishes as well as any risks or safety considerations to the court, to be included as a factor for consideration in the making of final orders.

### **Recommendation 5**

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Government must dedicate sufficient resources to ensure the availability of appropriately skilled and qualified lawyers with experience in providing legal assistance to children and young people in family violence matters, with an emphasis on ensuring availability in rural, regional and remote areas. Boosting the capacity and capability of existing services where there is already significant expertise should be prioritised.

### **Recommendation 6**

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Legislative and system reforms should address inconsistent approaches between courts to the consideration and weight given to children and young people's views.

### **Recommendation 7**

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Government should consult with relevant stakeholders on how the Victims Charter could be amended to specifically reference the rights of children as victims of crime to access information about FVIOs where they have been or are listed as protected persons, and the development of a notification scheme in relation to FVIOs.

## Our experience of the impact of the law

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**Consultation question: *If an order expires or is set to expire because of a child's 18th birthday, what impacts does this have on the child and their family?***

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Safe and Equal survivor advocates have provided two case studies to illustrate the impact of the current legal and justice system on FVIO duration for children and young people and their respective parents. We thank these survivor advocates for their valuable lived experience expertise, which is critical to ensuring legal and systems change meets the needs of those impacted most.

### **Case Study 1: A parent's perspective of FVIOs**

During a consultation run by Safe and Equal on this topic, a survivor advocate who has had six FVIOs against the same perpetrator over the course of a decade describes how parents remain vulnerable due to systemic barriers within the FCFCOA and the Victorian Magistrates Court. Parenting Orders allow perpetrators to maintain contact under the pretext of co-parenting, making it impossible for victim-survivors to be safe and enabling abuse to continue.

*"Federal law says you have to have a relationship with your abuser. You must co-parent with your abuser. He can contact you on the pretext of being about the child, but basically, [it's] coercive control—he manipulates, he abuses [to get more than what the parenting orders allow for]—and that's all cool.*

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This survivor advocate has four children and describes how once her children turned 18, they were required to apply for their own intervention orders, a process she believes would be highly re-traumatizing for them.

*I haven't raised [them getting their own FVIO] with them, to be honest. I just thought—they don't even want to hear his name. They don't want to hear his voice. If they know he's dropping off the younger one, they will pretty much go to the back of the property to avoid being near him. So, I just try not to trigger any of that.*

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The legal system offers little guidance on how parents can assist their adult children, leaving victim-survivors navigating complex legal structures alone.

*I didn't want them to go through the trauma of being in court because it's highly stressful... If we have to go through the legal process to protect ourselves, we should be supported to do that in our best interests and the best interests of our children.*

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This survivor advocate's experiences highlight the urgent need for a trauma-informed legal system that prioritises the safety and well-being of survivors.

*Every time I'm in the safe room, I spend the day just pacing up and down, unable to eat—stressed off my head. It's a very foreign landscape. The language is foreign.*

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The system does not ensure legal support for victim-survivors, especially when conflict-of-interest rules are invoked. The survivor advocate shared that she was unable to access free legal services like Legal Aid because the perpetrator had already used those services, which caused a conflict of interest that disqualified her from accessing them. A dedicated family violence legal service for AFMs would prevent perpetrators from monopolising existing free services and leaving survivors without help. Such services should support victim-survivors and their children in holistic ways, providing clear guidance and managing the legal process to minimise trauma.

*We need a dedicated family violence legal service. Even someone to speak for you so you don't even have to speak. Someone who can represent your interests, know exactly what you want said, and protect you—because you need that shield sometimes.*

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Services for young people must be trauma-informed and support their understanding around what an intervention order is, how they can stay on their protective parent's FVIO, and how they can get their own FVIO if they want one. Without systemic change, victim-survivors and their children will continue to bear the burden of navigating an unhelpful and often harmful legal system on their own.

### **Case Study 2: A young person's experience of navigating the system**

In a consultation run by Safe and Equal with survivor advocates on this issue, a young survivor advocate highlighted the significant barriers young people face in navigating the Family Violence Intervention Order (FVIO) system. There is a lack of tailored support to help them understand intervention orders, apply for them independently, or remain protected once they turn 18.

*There are few if any tailored and dedicated supports to either assist children and young people to understand what an intervention order is, whether they are on one, or how to get a standalone FVIO in place.*

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Many young people, especially those from marginalised and overpoliced communities or those who have already encountered the justice system, experience deep distrust toward authorities. The complexity and inaccessibility of the FVIO application process, combined with overwhelming legal language, make it nearly impossible for young people — especially neurodivergent individuals — to complete the process without support. Additionally, breaches of intervention orders often go unpunished, leaving young victims feeling helpless and unprotected.

*Most young people, if they're trying to get an intervention order on their own, would not bother. They would just give up. They wouldn't bother because a lot of young people experiencing family violence do not have any supports.*

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The survivor advocate goes on to describe when they were supporting another young person under 18 to apply for their own FVIO, "It was overwhelming. There was a lot of detail we had to provide, and the language wasn't always very clear".

Structural issues within the court system and police responses exacerbate the problem, with young victims often disbelieved, ignored, or victim-blamed. Physical court environments pose risks, as there are few safe spaces at some courts to avoid encountering perpetrators. Victims



from disadvantaged backgrounds report more negative interactions with police, who are seen as dismissive or biased toward male perpetrators.

*People won't believe you based on your age—they never do. You could scream at the top of your lungs about being abused and harmed, but no one will take action. Instead, they'll say, 'Okay, but we need to speak to your parents,' who will often tell a different story. This is especially problematic when the abusive parent is the one being consulted. If you already have a history with the police, are known in the community for issues like drug or alcohol use, or if you look a certain way—especially coming from a low socioeconomic background—people won't listen. If you don't have shoes, wear a dirty uniform, or appear dishevelled, they'll dismiss you. But at the same time, if you're too articulate or not emotional enough, they still won't believe you.*

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Many young people will continue to avoid the FVIO system, choosing instead to endure ongoing abuse or leave home prematurely, often entering further cycles of violence and hardship.

*A lot of kids experiencing family violence will probably just leave as soon as they're physically able to and might end up in their own abusive relationships just to escape.*

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The survivor advocate underscores the need for systemic change, including youth-specific family violence services, accessible legal assistance, and multiple entry points for information.

*A lot of kids in care are on custody orders with out-of-home care. But once they turn 18, there's no protections anymore. And then they have to go through a court process—on their own.*

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They called for “a dedicated family violence service specifically for young people between 12 and 18, because there's nothing.”

Young people should have access to FVIO information in hospitals, mental health services, and youth programs, where they may already seek support. Further, trial periods should be offered for young people to opt in and out of FVIOs and integrating FVIO information into youth services could improve accessibility. Co-designing FVIO processes with victim-survivors and young people should be prioritised:

*Information should be accessible and inclusive. That includes having video options, read-aloud options... and it should be co-designed with victim-survivors.*

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## **Recommendations**

### **Recommendation 8**

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Government must dedicate resources to ensure that free, tailored, trauma-informed, and culturally appropriate legal assistance as well as wrap-around and therapeutic support, is available to support children and young people who have experienced family violence to navigate complex legal system processes. Prioritisation should be given to service availability in rural, regional and remote areas across Victoria, and for young people living with disability.

### **Recommendation 9**

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System wide capability development is required to ensure professionals working within the legal and justice systems, including lawyers, court staff, magistrates and family violence workers have the skills and knowledge necessary to support children and young people in a trauma informed and culturally appropriate way.

### **Recommendation 10**

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Any reforms must include consultation with those with lived experience, to ensure that they meet the needs of those most affected and any unintended impacts can be understood and accounted for.