



Peninsula
Community
Legal Centre

Submission to Inquiry into Family Violence Orders Standing Committee on Social Policy and Legal Affairs

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1. Introduction

Peninsula Community Legal Centre (PCLC) welcomes the opportunity to make a submission to the Standing Committee on Social Policy and Legal Affairs Committee Inquiry into Family Violence Orders.

2. About Peninsula Community Legal Centre

PCLC is an independent, not-for-profit organisation that has been providing free legal services to vulnerable and disadvantaged people in Melbourne's outer southeast since 1977. It is one of the largest community legal centres in Australia, with its family law and family violence programs serving a population of over one million people across six local government areas. PCLC's head office is in Frankston, with 4 branch offices in Bentleigh, Cranbourne, Frankston North and Rosebud, and 15 visiting outreach services across the catchment.

PCLC provides legal information, advice, ongoing legal assistance and representation and undertakes community legal education, community development and public advocacy activities. In addition to its general legal services, the Centre operates programs and services in family law, family violence, fines, tenancy, rooming house outreach and general law.

PCLC provides clients with free and accessible legal services, particularly the most disadvantaged and marginalised in our community who may otherwise fall through the gaps as they cannot afford private lawyers and would not qualify for legal aid. 81% of our clients exist on no or low income.

Of particular relevance to this Inquiry, the most common legal problems for our clients are family law and family violence. Typically, our clients' family law and family violence problems are complicated by the risk of homelessness as a consequence of escaping domestic violence, which can also mean they remain in or return to unsafe situations, welfare concerns for children, disability or a history of substance abuse.

Contrary to a common misunderstanding about the work conducted by community legal centres, PCLC's specialist programs in family law and family violence services involve complex and significant casework where our family law and family violence lawyers conduct cases from start (negotiations/pre-action procedures) to finish (settlement/trial). Of the clients assisted by PCLC's family law litigation team, 75% instruct that they have experienced family violence either during the relationship or post separation.

In 2022-2023:

- Our family law lawyers assisted 1,586 clients, providing 425 duty lawyer services, 149 representation services, and 1,858 legal advice services.
- Our family violence lawyers assisted 1,669 clients, providing 2,215 duty lawyer services, 38 representation services, and 1,643 legal advice services

3. Summary of Recommendations

1. Increase funding to legal services to ensure that legal assistance is available to help victim-survivors navigate their family law matters to ensure that family violence risk is appropriately assessed and addressed.
2. Ensure that determinations in relation to allegations of family violence are made by the Federal Circuit and Family Court of Australia at an earlier stage in family law proceedings in cases involving vulnerable unrepresented litigants.
3. Evaluate the impact of Lighthouse Project and Evatt list in the Federal Circuit and Family Court of Australia
4. Implement additional measures to address vexatious litigants/systems abuse across both the federal family law system and state family violence systems, including better information sharing systems between the courts
5. Increase the use of section 68R of the *Family Law Act* in state and territory courts to fill the current gap in the protection of victims of family violence caused by the interaction between family law and state and territory family violence legislation.
6. Provide training for Magistrates and legal practitioners in relation to increased use of s.68R.
7. Implement measures to improve the physical design of the courts to provide greater accessibility and security in all family law courts.
8. Locate safe waiting rooms close to court rooms to reduce the opportunity for perpetrator intimidation and ensure security is available to escort court users to the court room.
9. Support accessing remote hearing facilities for victims of violence and provide more support services for people to attend hearings remotely. Provide dedicated family violence support workers to assist victims on the day of the hearing.
10. Provide additional and increased funding for community legal centres and Legal Aid Commissions for family law and family violence services, including programs such as FASS and the Family Law to Family Violence Continuity Program, to enable them to respond to the level of unmet legal need.
11. Provide increased funding for other non-legal wrap-around supports for victim survivors navigating the family law system.
12. Make regular family violence training compulsory for all judicial officers and court staff from the family courts and state and territory courts dealing with matters involving family violence.
13. Improve training for legal professionals who work in state FVIO and family law jurisdictions, as well as judicial understanding of each jurisdiction.
14. Provide training to police about the intersection between FVIOs and parenting orders and the nature of coercive control to improve police response.

15. Develop and implement compulsory training for separating parents who are parties to family law proceedings which includes issues such as the priority placed by the court on the safety of children in making parenting orders.
16. Amend the Family Law Act to require the Court to inquire whether any alleged family violence should be taken into account as an additional factor in determining a just and equitable financial settlement.
17. PCLC endorses the recommendations of National Legal Aid and Women's Legal Services Australia [joint statement outlining seven key priority national legal and policy reforms](#) needed to address the domestic and family violence crisis across Australia.

All case studies in this submission have been de-identified.

4. Response to Terms of Reference

The Committee will inquire into and report on how to provide better access for victim-survivors in the family law system to Family Violence Orders (FVO) and the effective enforcement of those orders. The inquiry will have regard to:

1. The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.

Many of PCLC's clients report an escalation of family violence during separation and family law proceedings. In our experience, many perpetrators use the legal system itself to continue and increase the abuse of the partner and children, often over many years, as an ongoing method of coercive control. These tactics force victim survivors to incur huge legal fees, or if they cannot afford a lawyer and do not qualify for legal aid, to represent themselves in court. As a result, very often they end up being forced agree to agree to unfair parenting and child support arrangements, or stay in the abusive relationships.

The escalation of risk is compounded by the fragmentation of the federal and state jurisdictions, the nature of the adversarial legal system itself, and other systemic barriers outlined below. In particular, the lack of sufficient affordable or free legal services to assist victims of violence to navigate their way through the complexities of the fragmented legal system constitutes a major barrier to their safety and to achieving a just and fair outcome.

We note that a lack of legal representation continues to be an extremely significant disadvantage despite efforts by the courts to accommodate and assist unrepresented litigants appearing before them. In PCLC's experience, many unrepresented litigants have great difficulty handling their legal case, including filling out forms or even articulating their problem, let alone identifying and gathering

supporting evidence. This can be compounded when the escalating aggression and violence is more subtle and where there has not been an example of very recent physical violence.

Without legal representation, it can also be difficult to negotiate with opposing parties and resolve the matter before a hearing. For example, our duty lawyers have seen unrepresented applicants who have experienced family violence who have been bullied or pushed into parenting orders by the lawyers for the opposite party, or even succumbed to pressure to agree by a judicial officer, in a context where the opposite should be happening. Other unrepresented litigants have reported that they consented to final orders which were not in their own or their children's best interest because they were so fatigued by the perpetrator's ongoing threats and the litigation itself that they just wanted to get out of the system to try to protect themselves.

One of the most effective ways to assist unrepresented litigants is to provide additional and increased funding for community legal centres and Legal Aid Commissions for family law and family violence services. This is particularly needed at this time when there have been significant changes to the family law system and when we are facing a national family violence crisis.

PCLC acknowledges and welcomes the recent changes that have been made in the family law system, such as the Lighthouse program and the expansion of the Evatt list, to identify family violence risk early and create a more efficient pathway through the system for those at high risk.

However, PCLC remains concerned about the accessibility and effectiveness of these changes for unrepresented litigants, particularly those with complex needs such as low income, lack of education, disability, limited or no English and inability to use or access technology. We remain concerned that there is still the potential for serious cases of violence to fail to be get picked up by the system.

The following case study illustrates how family violence can escalate when family law proceedings are initiated and how unrepresented litigants can struggle to articulate the extent and severity of risk in their Federal Circuit and Family Court of Australia (FCFCOA) proceedings.

Casey's Story

Casey has a family violence intervention order (FVIO) against her ex partner Tim. She has attempted to report breaches of the FVIO, but the police appear reluctant to assist her. Tim is a known police informant, and also has a long criminal record and uses illicit substances frequently.

Tim has commenced proceedings in the FCFCOA for parenting orders in relation to their three children, who Casey has withheld from him. Tim has continued to breach the FVIO since the family law proceedings were initiated, including through violence against the children.

Casey earns too much money to be eligible for a grant of legal aid, but too little to be able to afford a lawyer. She prepared her own response to the father's FCFCOA application. When she consulted with our duty lawyer on a hearing day, he noted that her affidavit does not sufficiently deal with the extraordinarily violent and obviously harmful behaviour of Tim towards the children.

Our duty lawyer noted that if the allegations against the other party were true, that this was a most distressing case of child abuse and that he was unsure why action had not been taken before by the Magistrate's Court and police. Casey's response to the father's application in the FCFCOA was wholly inadequate as she had not been able to obtain legal advice before she drafted the documents. Our duty lawyer advised her to seek an order for an Independent Children's Lawyer and after the hearing to immediately report the matter to the relevant authorities.

We also note that some 80% of family law proceedings settle before proceeding to final trial. This means that in most cases a finding by the court on family violence will not have been made. PCLC considers that this creates a risk that for victims of violence who are not legally represented, the issue of family violence may get "lost" in the proceedings leading up to settlement. This may result in victims of violence consenting to terms which do not properly protect themselves or their children.

In previous submissions to reviews of the family law system, PCLC and other stakeholders have recommended that the Family Law Act should be amended to require the Federal Circuit and Family Court of Australia to make a determination in relation to family violence at an earlier stage in proceedings.¹

While PCLC acknowledges that a blanket requirement is no longer required following the establishment of reforms at the court such as the Lighthouse Project and the expansion of the Evatt list, we continue to believe that an early determination of family violence may still be required in certain cases involving vulnerable unrepresented litigants.

For example, this could be facilitated by an increase in funding for more Community Legal Centre or Legal Aid Commission family lawyer programs to provide targeted assistance for such clients that involve document drafting to allow those clients to raise the issue of family violence with the Court in a properly drafted Affidavit and Application in a Proceeding. This would compel the Court to address the issue and the Court could then rely on what was in the documents, meaning that the vulnerable unrepresented party would not need to try to make oral submission themselves at a hearing, which they are unlikely to be able to do effectively.

There are a number of existing schemes which could also be expanded so that vulnerable unrepresented parties who claim family violence is an issue could obtain an order early in the case that covers a lawyer being appointed to draft an Application in a Proceeding and a supporting Affidavit and then represent them at subsequent Interim Defended Hearing to make a finding on the issue of family violence.

We also believe that the impact and effectiveness of changes such as the Lighthouse Project and the Evatt list need to be critically evaluated to assess whether they are ensuring that all litigants who

¹ Peninsula Community Legal Centre, Submission to Australian Law Reform Commission Review of the Family Law System, (7 May 2018), p13

have experienced or are at high risk of family violence are being properly identified and responded to adequately.

Recommendations

- Increase funding to legal services to / ensure that legal assistance is available to help victim-survivors navigate their family law matters to ensure that that family violence risk is appropriately assessed and addressed.
- Ensure that determinations in relation to allegations of family violence are made by the Federal Circuit and Family Court of Australia at an earlier stage in family law proceedings in cases involving vulnerable unrepresented litigants.
- Evaluate the impact of Lighthouse Project and Evatt list in the Federal Circuit and Family Court of Australia.

2. The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:

a. the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO

PCLC considers that the problems experienced by victim survivors of violence in the family law system having to attend multiple courts for their family law order proceedings and an FVIO are particularly acute in cases involving perpetrators who are vexatious litigants.

Neither the state family violence system nor the federal family law system provide adequate responses to the problems posed by vexatious litigants to victims survivors of family violence, and better information sharing systems between the courts in relation to vexatious litigants need to be established.

In this regard, PCLC also supports the first recommendation in the National Legal Aid and Women's Legal Services Australia [joint statement outlining seven key priority national legal and policy reforms](#) for the establishment of a national family violence risk information sharing scheme and register that would include a register of family court orders, family violence orders and other relevant information regarding risk factors, including child protection issues.

The following case study illustrates how vexatious litigation can result in victims of violence having to attend multiple courts across the State.

Samantha's story

Samantha is the mother of one child that she shares with her ex-partner Nigel. Nigel has serious mental health conditions and is a habitual drinker. Nigel has a history of violence

towards Samantha and towards his former partner and her kittens. He has a significant criminal history involving violent crimes and has been incarcerated for assault of a police officer and breaches of intervention orders against him.

Samantha applied for an FVIO following an incident in the former shared home and has also commenced family law proceedings. In retaliation Nigel applied for a series of seven FVIOs where Samantha is the respondent at various Magistrate's Courts around Victoria. In each application, he listed the child as an affected family member. The child is in Samantha's sole care and has significant special needs. On each occasion, Samantha was required to attend court, creating considerable logistical and child care difficulties for her. In total Nigel made seven FVIO applications, which were all struck out.

The family law matter has been placed on the Evatt list in the Family Court, and Nigel is now opposing the application for parenting orders, despite not having spent time with the child for two years, and having very low prospects of obtaining the orders that he is seeking. The FCFCOA has been provided with his police records, however, his persistent applications for intervention orders have not been shared with the court. If there were more effective information sharing between the courts, the FCFCOA would have access to Nigel's numerous FVIO applications, which have been struck out in the Magistrate's Court. This would enable the FCFCOA to quickly form the view that he is a vexatious litigant.

Recommendation

- Implement additional measures to address vexatious litigants/systems abuse across both the federal family law system and state family violence systems, including better information sharing systems between the courts.

- b. the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO**

Section 68R of the Family Law Act

Section 68R of the *Family Law Act*, when read with section 90 of the *Family Violence Protection Act 2008 (Vic.)* which expressly refers to s68R and mandates the Magistrates' Court to deal with any inconsistency between a parenting order and protection order, plays an important role in protecting victim/survivors from family violence, especially where family violence arises after the making of a parenting order.

PCLC agrees with the Australian and NSW Law Reform Commissions that section 68R has been under-utilised for a variety of diverse reasons and that "increasing and fostering the use of section 68R in state and territory courts is necessary to fill a gap in the protection of victims of family violence caused by the interaction between family law and state and

territory family violence legislation". We support the Commissions' recommendations 16-1, 16-2, and 16-3 to this end.²

We also support the Commissions' recommendations regarding the need for training of Magistrates and legal practitioners in this area in recommendations 16-8 to 16-9.

Recommendations

- Increase the use of section 68R of the *Family Law Act* in state and territory courts to fill the current gap in the protection of victims of family violence caused by the interaction between family law and state and territory family violence legislation.
- Provide training for Magistrates and legal practitioners in relation to increased use of s.68R.

c. the availability of wrap-around support services and security for victims of violence.

PCLC considers that the location of safe rooms and access arrangements in some courts still present opportunities for survivors of family violence to come into negative contact with perpetrators. While this has become less of an issue since the increase in the number of matters being dealt with online since COVID, in our view this still needs to be addressed.

The location of the safe room at the Dandenong Registry of the Federal Circuit Court, for example, requires clients to enter the court building through the main entrance, cross a public foyer and go up a floor to the court reception desk where they must request the use of the secure room which they need to have booked prior to the court date. Clients are advised to arrive early in the morning prior to their hearing time to avoid coming into contact with the perpetrator. Despite arriving early, a number of our clients have still had intimidating contact with perpetrators in these public areas on the way to the safe room.

In addition, there is only one public door to the secure room meaning users have to pass through the public waiting area in order to access the court. In practice, this means that perpetrators and their family and friends can sit outside the safe room door in order to intimidate clients as they leave the safe room to enter the court.

Our lawyers have also noted an inconsistent approach by the courts to requests to attend court remotely. Greater consistency and support for victims of violence who wish to attend court remotely should be provided, as well as more support services for those who need to attend hearings remotely.

The provision of dedicated family violence support workers to assist victims on the day of the hearing would also be desirable.

² Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report No 114, NSWLRC Report 128 (2010), rec 16

Recommendations

- Implement measures to improve the physical design of the courts to provide greater accessibility and security in all family law courts.
- Locate safe waiting rooms close to court rooms to reduce the opportunity for perpetrator intimidation and ensure security is available to escort court users to the court room;
- Support accessing remote hearing facilities for victims of violence and provide more support services for people to attend hearings remotely.
- Provide dedicated family violence support workers to assist victims on the day of the hearing.

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

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

The need for increased funding for the legal assistance sector

Increased funding for legal assistance services is required promote early identification of and response to family violence and to respond to the increase in demand for these services created by the national family violence crisis.

As noted above, it is critical that more disadvantaged and vulnerable unrepresented litigants are able to be supported through access to legal services to ensure that the recent reforms to the family law system are accessible and implemented fairly and efficiently. In addition to experiencing family violence, many unrepresented litigants accessing PCLC's services experience disadvantage, including low income, lack of education, disabilities, and limited or no English.

PCLC represents both victims and perpetrators of family violence. Where both parties in family law proceedings are assisted by legal assistance services, the proceedings are more timely, efficient and trauma-informed, leading to better outcomes for both parties, their children and the justice system more broadly.

PCLC is currently funded by Victoria Legal Aid (VLA) to operate two programs that assist victims of violence in the family law system. These programs require increased funding in order to meet the enormity of the need for such services.

Family Advocacy and Support Service (FASS)

Since 2017, PCLC has received funding from Victoria Legal Aid (VLA) to provide Family Advocacy and Support Services (FASS) at the Dandenong Registry of the FCFCOA.

Under the FASS program, families impacted by family violence receive advice about the interaction between federal *Family Law Act* orders, State family violence intervention orders and child protection orders. In addition to potentially de-escalating conflict, this also serves to assist clients in navigating between the federal and state systems. FASS duty lawyers assist with advice, negotiations, the drafting of documents and representation on the day.

FASS is an integrated service providing not just legal advice but holistic social supports for those impacted by family violence, including by linking clients with accommodation, financial counselling, mental health supports and drug and alcohol support services.

While FASS significantly enhances the provision of duty lawyer assistance in a multidisciplinary environment, in our view the program needs to be supplemented by, and to work in conjunction with, services such as PCLC's Family Violence to Family Law Continuity Program. FASS provides very limited ongoing or continuing legal assistance to navigate the complexities of the family law legal system or to ensure that family violence issues are adequately addressed throughout the fragmented jurisdictions.

The Family Violence to Family Law Continuity Program (FV2FLCP)

PCLC's Family Violence to Family Law Continuity Program provides family law advice, casework and representation to clients who have experienced family violence.

The program allows the partner community legal centres to conduct casework on a legally aided basis by making application for grants of professional costs. This program enables PCLC and other community legal centres to represent clients from start to finish in their family law matters, something which would otherwise be difficult to achieve with CLC's usual funding arrangements.

PCLC's FV2FLCP lawyers help the client navigate their way through the family law system beyond their first court appearance. Providing start to finish legal representation in this way assists in building and maintaining trust between traumatized clients and the PCLC lawyer, thereby reducing the likelihood of client disengagement. It also allows the client better access to VLA's Family Dispute Resolution Service and litigation representation, and ensures that family safety issues are kept to the fore and not lost in the complicated process of navigating the family law system. By providing continuity of support the program has proved to be a successful model of legal assistance specifically designed to address the jurisdictional fragmentation between the two systems.

Together, FASS and the FL2FVCP provide an integrated service model which helps families navigate to navigate complex and fragmented jurisdictions through access to integrated legal and non-legal services. Case management minimises risk, family violence is identified earlier, legal help is provided at critical points, and access to wrap around social services and other support systems is facilitated.

The following case study is an example of how the FL2FV Continuity Program can facilitate outcomes for clients that would not be possible in any other way.

Amanda's story

Amanda and her ex-partner, Rufus, had been together for a decade and had two young children. Amanda ended the relationship due to Rufus's frequent family violence, including sexual violence against Amanda.

After separation the children lived with Amanda but initially spent regular time with Rufus. At a changeover one evening, the children were asleep at Rufus's home when Amanda came to collect them. Rufus raped Amanda in the same room the children were sleeping in. One of the children woke up and witnessed part of the rape.

Amanda reported the rape to police and they initiated an investigation against Rufus. She also refused to allow Rufus to spend time with the children. Rufus made threats against Amanda, including to take the children. Amanda applied for a Family Violence Intervention Order for herself and the children, which Rufus breached many times.

Rufus then initiated proceedings in the Federal Circuit & Family Court of Australia (FCFCOA), seeking parenting orders that the children live with each parent. He claimed that Amanda's rape allegation was false.

PCLC drafted Amanda's court documents to respond to Rufus's family court application and included information about the police investigation in her Affidavit. The matter was transferred into the Evatt List. PCLC also subpoenaed the police which revealed that, in addition to charges of rape against Amanda, Rufus had a string of serious criminal charges against him for which he would likely be incarcerated.

Due to the complexity of the matter, PCLC engaged in a significant amount of work to represent Amanda to obtain orders for no time between Rufus and the children given the very grave risk that Rufus posed to the Amanda and the children. This included successfully advocating that the children would not be brought into contact with Rufus for any observations with the Court Child Expert during the Evatt List Child Impact Report.

At an interim hearing, PCLC was successful in obtaining the final orders that Amanda was seeking, including sole parental responsibility for the children and orders that Rufus could not spend any time or have any contact with the children at all.

When Amanda sought our assistance after being served with Rufus's court application, it was one week before the first return date. We do not think that any private lawyer who does legally aided family law work would have had time to take the matter on and prepare all the documents in time. Amanda was unable to pay a private lawyer to represent her.

We also have no doubt that Amanda would have been unable to represent herself to prepare the required documents, issue the required subpoenas and make the necessary submissions to the Court to obtain this outcome and avoid the case continuing to a final hearing. Continuing to a final hearing would have been incredibly stressful for Amanda, who understandably found the family law proceedings extremely stressful given what she had been through and that there was also a criminal case going on at the same time against Rufus.

The Family Violence to Family Law Continuity Program enabled PCLC to obtain a grant of legal aid urgently and start drafting Amanda's Court documents even before Victoria Legal Aid approved Amanda's litigation grant, getting the documents drafted, filed and served in less than a week. We then represented Amanda throughout the proceedings and obtained the documents and information necessary to show the extent of Rufus' offending and bring that to the attention of the Court Child Expert, and then obtain the best possible final orders.

Recommendations

- Provide additional and increased funding for community legal centres and Legal Aid Commissions for family law and family violence services, including programs such as FASS and the Family Law to Family Violence Continuity Program, to enable them to respond to the level of unmet legal need in this area.
- Provide increased funding for other non-legal wrap-around supports for victim survivors navigating the family law system.

4. Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

The need for improved training for judges and court professionals

Numerous studies and inquiries have confirmed the importance of training and professional development in building the capacity of the family law system to respond to family violence, regarding the need for family violence, family law and child protection training for all court staff and judicial officers. (Recommendations 215 and 216 of the Victorian Royal Commission into Family Violence)

Improved training on family violence across both the family law system and the state FVIO legal system would assist in developing a legal system that is family violence informed, trauma-informed, culturally safe, and child rights focused.

The recent reforms to the Family Law Act should be supported by mandatory and ongoing specialised family law training for judicial officers and court staff, which prioritises the safety of

children and their carers in family law proceedings and recognises the prevalence and impact of family violence in such proceedings.

In addition, we also support improved training for legal practitioners who work in state FVIO or family law jurisdictions, as well as judicial understanding of each jurisdiction.

Recommendations

- Make regular family violence training compulsory for all judicial officers and court staff from the family courts and state and territory courts dealing with matters involving family violence.
- Improve training for legal professionals who work in state FVIO and family law jurisdictions, as well as judicial understanding of each jurisdiction.

The need for improved police response and police training

PCLC's clients often report that when they report breaches of FVIOs to police where family law proceedings are also on foot, police will often refuse to report the breach as they consider it to be a family law matter. Often police do not understand the role of coercive control in child arrangements, which can often involve more subtle actions which are part of the pattern of family violence and therefore constitute breaches. Police need to be trained that even what they might consider "small" breaches need to be recorded and followed up on.

Theresa's story

Theresa and her ex-partner, Richard, have one child. After enduring many months of emotional, financial and physical abuse, Theresa moved out of the shared home with her young child into a women's refuge, arranged by FV services. Theresa agreed that Richard could spend some time with the child on an afternoon. Richard failed to return her. The COVID-19 pandemic lockdowns commenced shortly afterwards and Theresa could not access any services to assist. She had no access to a computer and the court system had become an online system. She was isolated from all help.

She was eventually able to file a recovery application, but it took another three months to obtain appropriate interim parenting orders. During that period, Richard used the women's housing accommodation as a reason not to allow her to spend time with the child during the lockdowns. He had located where she had been moved to. By the time the matter went to an interim defended hearing, Theresa was so desperate to spend overnight time again with her very young child that she agreed to an equal shared care arrangement, which also provided for a number of handovers on a fortnightly basis instead of a week about basis.

Over the next three years since the final orders were made, Richard continued to perpetrate family violence by being extremely intimidating and denigrating at handovers, often exposing the child to his aggressive outbursts, including emotionally abusing Theresa by calling her derogatory names, throwing the child's clothing she had packed at her, deliberately leaving many of the child's belongings at his home, refusing to consent to medical appointments and the like. Richard was also inadequately caring for the child and refused to provide his phone number to Theresa so that she had no way of contacting him or the child in the case of an emergency. The child started becoming anxious and unsettled at school and began to get sick often. Richard suggested Theresa was making this up and refused to agree to medical appointments. The child voiced their distress about the situation to Theresa.

Theresa obtained a full family violence intervention order (FVIO) against Richard. He then proceeded to apply for a FVIO against her. Theresa consented to a limited order without admission so that he would consent to the order against him. Theresa hoped he would then stop the abuse. She has since reported many breaches of the FVIO and on most occasions, the police would shrug and suggest it was a parenting matter.

When Theresa eventually got the courage to make an application for a variation of the parenting orders, the father became more intimidating towards her in the child's presence. The child reported what they had witnessed to the police who would not agree to investigate the breaches due to the child's young age, again suggesting to Theresa that it was a Family Law matter.

The father opposed the orders she was seeking on the basis that there are no changes in circumstances to support Theresa's application for a variation of the current parenting orders, which is a legislative requirement. The matter was listed for a hearing on this point only, which would only occur 6 months later. Theresa will have to manage the father's behaviour until then and the child will continue to be exposed to the father's behaviour until then. He also sought a costs order against Theresa. These actions are all part of the pattern of family violence.

Theresa is anxious and traumatised by the family law system and the impact the delays and lack of progress is having on the child. She cannot rely on police to assist her to manage the persistent and subtle breaches of the FVIO and Richard's controlling behaviour. Each interaction with him causes her extreme anxiety and fear. Our lawyers are able to shield her from most of this, but the wait and the fact that the police do not understand the role of coercive control in child arrangements exacerbates her trauma.

Recommendation

- Provide training to police about the intersection between FVIOs and parenting orders and the nature of coercive control to improve police response.

The need for compulsory training for separating parents

PCLC considers that parties to family law proceedings involving children should be required to complete a compulsory “Parenting through Separation” course similar to that in New Zealand. In addition to helping parents to understand the needs of their children, the aim would be to educate parents about how the court must prioritise the safety of children in determining the best interests of the child when making parenting orders.

Recommendation

- Develop and implement compulsory training for separating parents who are parties to family law proceedings which includes issues such as the priority placed by the court on the safety of children in making parenting orders.

Family Violence and FCFCOA Property Orders

PCLC notes that for victim/survivors of family violence, one of the most important factors that impacts on their ability to leave the relationship is access to housing and longer-term financial independence. While not strictly within the TORs of this Inquiry, we wish to note that one area where PCLC believes family law reform is still required is the consideration of family violence considerations in property settlements.

PCLC considers that the Family Law Act should be amended to require the Court to inquire whether any alleged family violence should be taken into account as an additional factor in determining a just and equitable financial settlement.

Recommendation

- Amend the Family Law Act to require the Court to inquire whether any alleged family violence should be taken into account as an additional factor in determining a just and equitable financial settlement.

PCLC also endorses the recommendations of National Legal Aid and Women’s Legal Services Australia [joint statement outlining seven key priority national legal and policy reforms](#) needed to address the domestic and family violence crisis across Australia.