



Peninsula
Community
Legal Centre

Submission in response to the Victoria Law Reform Commission's
***Examining Aspects of Family Violence Intervention Orders for Children and Young
Adults: Stage 1 –Protection for children who turn 18 while on a FVIO Issues Paper***

April 2025



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1. Introduction

Peninsula Community Legal Centre (PCLC) welcomes the opportunity to make this short submission in response to the Victoria Law Reform Commission's *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* Issues Paper.

We also welcomed the opportunity to participate in a roundtable with the Commission and sector colleagues on 2 April 2025.

2. About Peninsula Community Legal Centre

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 programs including large family violence and family law programs serving a population of over one million people across six local government areas. PCLC's head office is in Frankston, with branch offices in Bentleigh, Cranbourne and Rosebud, and 18 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. Of relevance to this community law reform project, the most common legal problems for our clients are family violence and family law issues.

Our family violence team provides daily duty lawyer services at the Frankston and Moorabbin Specialist Family Violence Courts, as well as providing advice and casework for clients affected by family violence. PCLC offers pre-Court advice to help clients understand their rights and make informed decisions before their hearings, as well as representation at Court. Our family violence services are in high demand. In the 2023-2024 financial year, our family violence lawyers assisted 1,657 clients, providing 2,238 duty lawyer services, 128 representation services, and 1,111 legal advice services. The family violence team also makes in-house referrals where appropriate to ensure comprehensive support is provided to clients, including with family law issues. Of the clients assisted by PCLC's family law litigation team, approximately 75 per cent instruct that they have experienced family violence either during the relationship or after separation.

To strengthen and enhance our response to family violence in the community, our family violence team provides intake services at various locations in addition our office-based appointments, including at The Orange Door, Maternal and Child Health Centres, and Wellsprings for Women's Clinic.

In 2022, we developed the *This is Not Who I Want to Be* project, funded by the Victoria Law Foundation. This was a highly innovative, early-intervention initiative which used participatory

theatre performance on the topics of family violence and forced marriage at secondary schools in the City of Casey. The project received a bronze award in the community-led category of the 2024 Australian Crime and Violence Prevention Awards. Building on this project, PCLC has now been funded by the Victoria Legal Services Board to deliver the *No Pressure* interactive theatre project over the next two years, providing legal education on youth crime and family violence, exploring common themes of coercive control, controlling behaviour and peer pressure.

The findings of our initial youth theatre project were integral to the development of PCLC's school lawyer program. In this program, one of our lawyers is embedded in Cranbourne Secondary School in the City of Casey to provide legal education on youth law issues across the school, including family violence issues, as well as assistance to individual students with legal needs. Some students have sought advice/assistance from the school lawyer in relation to family violence and other forms of abuse.

PCLC also supports vulnerable young people with complex needs by providing legal support and assistance through a visiting service to the Youth Support + Advocacy Service (YSAS).

3. Responses to Issues Paper questions

Question 1 - Your experience of how the law is applied

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?

In our experience, Magistrates take varying approaches as to what will happen to a child who is protected under a family violence intervention order when they turn 18, and there is definite inconsistency.

We note that in our legal practice, we would normally come across this issue when advising and/or assisting a parent who is the primary applicant/AFM/protected person and has a child approaching 18 years, rather than advising and/or assisting the young person directly. However, our school lawyer has been consulted by students under 18 for advice about family violence issues and family violence intervention orders, and we expect the number of young people seeking advice/assistance from us directly to grow through the school lawyer program.

In some of our Specialist Family Violence Court matters that involved a child turning 18 within a few months of the hearing, the Magistrate has been aware of the upcoming 18th birthday for a young person but nevertheless still included that young person on an order that continued past their 18th birthday. These orders did not explicitly state that the order would continue to apply to the young person after they turn 18. We have seen Magistrates making these kinds of orders in relation to both fresh/new applications for family violence intervention orders, and applications for extension.

In other matters, the Magistrate has made the order only until the child's 18th birthday. In our experience, this tends to happen if the child still has a few years before they turn 18, rather than only a few months. Magistrates doing this tend to make a single order that protects multiple family members, with the order stating that the order only applies to X protected young person until they turn 18 (as opposed to making a separate stand-alone order for the young person that will expire on their 18th birthday).

Overall, in practice it seems that for family violence intervention order extension applications, the Specialist Family Violence Courts prefer an approach of having children who have subsequently

turned 18 make fresh applications in their own name, rather than be included on a family member's application for extension. A concern with this approach is that young adults who have previously experienced the trauma and associated impacts stemming from experiencing and/or being exposed to family violence are asked to bring applications individually. If this can be avoided, there will not only be greater efficiencies for the courts and legal services, but it would also allow the protected persons to seek further protection collectively and in the least traumatic way possible.

The inconsistent approaches taken by the courts make it difficult to provide advice about likely outcomes for family violence intervention order applications where one or more of the AFM's/protected person's children will turn 18 during the term of the order. It really depends on the presiding Magistrate on the day of a hearing as to how this situation is handled.

We would always advise a parent we had assisted if a FVIO will end for a child on their 18th birthday. However, it is possible that this information is not communicated by the parent to the young person. Without legal advice, a young person may not fully understand that the order will continue to protect other family members but that their protection has expired/will expire when they turn 18, particularly if the family members are all living together.

We cannot recall matters in which respondents have refused to consent to a family violence intervention order protecting a child beyond their 18th birthday, but it would currently be open to a respondent to take issue with an adult child remaining on an order.

Question 2 - Your experience of the impact of the law

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?

We note that there can be vastly different experiences for young people and their family if an order expires or is set to expire because of a child's 18th birthday, and it is very much case dependent.

In many cases, a young person does not suddenly lose the need for protection simply because they have turned 18, particularly where there has been enduring and serious family violence during that young person's life and other family members are afforded continuing protection. We note that any parenting orders made under the *Family Law Act* 1975 will also expire on a child's 18th birthday, which can mean that two sets of "guardrails" or protections can disappear on a young person's 18th birthday, potentially leaving them in an extremely vulnerable situation.

As referred to above, we have concerns for many young adults who have previously experienced the trauma and associated impacts from experiencing and/or being exposed to family violence being asked to bring applications individually and interact with the family violence Court system. We note that in some instances, applications being served on the respondent may also result in family violence escalating, or a parent who has perpetrated violence being brought back into the young person's life after a period of limited or no contact.

In contrast, we note there are situations where a young person did not necessarily wish to be named as a protected person on an order and now that they are 18, they wish to make their own decisions about their life and their safety and would welcome the revocation or variation of the order as it relates to them. Under question 3 below, we recommend a simplified process for a young person to apply to vary/revoke an order that continues past their 18th birthday.

Young people who do wish to apply for a new or extended family violence intervention order can face significant barriers to accessing legal information and assistance. Sometimes a parent may be able to direct the young person towards a legal service the parent has previously engaged with (subject to conflict-of-interest issues). School lawyer programs can be ideal for these situations, but not many young people have access to an embedded lawyer in their school. We would recommend the Australian and Victorian Governments provide increased funding to community legal centres so that school lawyer programs can be expanded into other schools.

Question 3 - Your views on options for reform

Do you think the law should explicitly state 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?

PCLC strongly supports the *Family Violence Protection Act 2008* being amended to explicitly state that children automatically continue to be protected by a family violence intervention order for the duration of the order even if they turn 18 during the term of the order unless the court finds that there is a good reason not to do this.

In the interests of safety and accountability, there needs to be complete certainty that an order is still enforceable in relation to an AFM/protected person who has turned 18 while a FVIO is in force. We note that longer-term or even indefinite FVIOs, where “ageing out” for a young person can be an issue, are often made in circumstances where significant family violence has occurred and where continuing protection is critical.

Case study

In a recent matter, the Court made a 5-year family violence intervention order for a mother and her three children. The father was the respondent. The eldest child, who was 16 years old, will be 21 years old when the order expires. The order did not explicitly state that the order would continue to apply to the young person after their 18th birthday.

There was a long history of significant family violence by the father towards the mother in this matter (including a criminal conviction for a violent assault on the mother in front of the children) and a history of child protection involvement with the family. There had been a series of one-year family violence intervention orders in place over the previous few years. Once an intervention order expired, the father would do something to place the mother and children in fear for their safety again, including attempting to break into their home and sending harassing messages.

The father did not attend the hearing. Our duty lawyer made submissions about the extensive history and cycles of family violence and the Court granted a 5-year order with only very limited exceptions. It would be incredibly concerning if Police considered that the order could not be enforced against the father in relation to this young person given the enduring history of significant family violence.

Judicial discretion maintained

Importantly, under this simple reform, Magistrates would retain discretion about how they wish to handle each matter. For example, a Magistrate could still decide to:

- Make a single family violence intervention order naming several family members as protected persons without reference to a child’s upcoming 18th birthday.

- Make a stand-alone family violence intervention order for a young person that expires on their 18th birthday, alongside another longer order protecting other family members (commonly, the mother and younger siblings); or
- Make a single family violence intervention order naming several family members as protected persons, including an express statement on the order that in relation to X protected person only, the order expires on their 18th birthday.

However, if a Magistrate chose to make a longer order without reference to a child's upcoming 18th birthday, the amended legislation would make it clear that the young person automatically continued to be protected for the duration of the order even if they turn 18, removing uncertainty for victim-survivors of family violence. In our view, this would be the preferable approach for the courts to take in combination with a simplified revocation/variation process for young people who have turned 18 and wish to remove themselves from an order, or change the conditions protecting them, which is outlined below.

Simplified revocation/variation process for unsupportive young people who have turned 18

PCLC proposes an additional safeguard to accompany the proposed reform, which would be aimed at supporting the agency of young adults. We suggest a simplified revocation/variation process for young adults turning 18 who are not supportive of remaining as a protected person on an order, or who wish to have the conditions varied.

In this simplified application process, the Court could produce an additional "application to vary, extend or revoke an order" form that is specifically designed for young adults. The form could include a section where a young adult can tick a box stating, *"I have turned 18 years of age and no longer wish to be named as a protected person on this order"*. A similar section could be developed that deals with a young person who has turned 18 and wishes to vary the conditions of the order. Using a specific, simplified form, there would be no need for the young person to provide reasons for the revocation/variation, which would remove the need for the young person to provide information to the Court about family dynamics and similar issues that may impact on family relationships and/or heighten risk.

We note that the application would still need to be listed for hearing in the usual manner of an application to vary, extend or revoke an order, with each party to the proceeding for the original order being served with a copy of the application and provided an opportunity attend Court in relation to the application. The Magistrate would retain the discretion to retain limited "safe contact" conditions for the young person rather than agree to complete revocation where they consider it appropriate.

We note that the current Victoria Legal Aid Private practitioner duty lawyer scheme to deal with conflicts may need to be used to provide independent legal advice/representation to the young person¹ on the day of any hearing given that both duty lawyer services may be conflicted out of the matter.

In our view, there are important principles or safeguards that should be applied in these types of applications:

- There should be a presumption in favour of the family violence intervention order being varied and/or revoked according to the wishes of the young person who has turned 18 and is not supportive of the order. However, the original applicant (often Police, but perhaps a parent), would have an opportunity to be involved in

¹ See <https://www.legalaid.vic.gov.au/private-practitioner-duty-lawyer-scheme-deal-conflicts>

negotiations on the day of the hearing and potentially make submissions to the Court about safety issues that the young person may not be aware of.

- By involving an independent duty lawyer, the young person could be provided with advice about the advantages and disadvantages of altering the order and information about potential safety issues could be discussed with the young person in a trauma-informed way. The simplified revocation/variation process could also potentially involve the young person needing to obtain independent legal advice before the Court considers the application to revoke/vary.
- There would need to be a safeguard to ensure that the “main” family violence intervention order is not re-litigated in relation to other protected persons, which could be traumatising and create uncertainty for a victim-survivor parent.

4. Further information and consultation

We look forward to being involved in Stage 2 of this community law reform project which will consider how children are given a voice and the ability to participate in the family violence intervention court process more generally.

For further information about any issues raised, please contact:

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