Review of the Implementation of the *Family Violence Act 2016* (ACT)

Report prepared on behalf of the ACT Government

Professor Lorana Bartels, Australian National University
Emeritus Professor Patricia Easteal AM, University of Canberra and Legal Light Bulbs
Dr Shannon Dodd, Australian National University

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ANU Centre for Social Research and Methods
+61 2 6125 1279
lorana.bartels@anu.edu.au

The Australian National University
Canberra ACT 2601 Australia
www.anu.edu.au

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All errors in this report are the authors' own.

Glossary

2008 Act	*Domestic Violence and Protection Orders Act 2008* (ACT)
Act	*Family Violence Act 2016* (ACT)
ACT	Australian Capital Territory
AFP	Australian Federal Police
AHFVO	After-hours Family Violence Order
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service
AMC	Alexander Maconochie Centre
ANU	Australian National University
CARHU	Child at Risk Health Unit
CSD	ACT Community Services Directorate
CYPS	Child and Youth Protection Services
DFV	Domestic and family violence
DV	Domestic violence
DVCS	Domestic Violence Crisis Service
DVO	Domestic Violence Order
DVPC	Domestic Violence Prevention Council
FCC	Federal Circuit Court of Australia
FV	Family violence
FVO	Family Violence Order
FVIP	Family Violence Intervention Program
FVSN	Family Violence Safety Notice
JACS	ACT Justice and Community Safety Directorate
HRC	ACT Human Rights Commission
HREC	Human Research Ethics Committee
NSW	New South Wales
PISN	Police Issued Safety Notice
SIFVO	Special Interim Family Violence Order
Standing Committee	ACT Standing Committee on Justice and Community Safety
VIS	Victim Impact Statement

Executive Summary

Aims

Across Australia, protection orders (known by various terms, including family violence orders (FVOs) and domestic violence orders (DVOs)) are the primary mechanism in each of the eight jurisdictions' system-based response to domestic and family violence (DFV). Although there are many differences across these jurisdictions' legislation, each has been amended numerous times. In the Australian Capital Territory (ACT), a number of DFV homicides in 2015, most notably Tara Costigan, and three inquiries aimed at investigating how the ACT was dealing with DFV, resulted in the *Family Violence Act 2016* (ACT) (the Act), which took effect on 1 May 2017.

The purpose of this report is to assess to what extent the Act (and its implementation and operation) has increased the protection of family violence (FV) victims, resulted in systemic and/or cultural change and look at possible ways to increase its effectiveness.

By gathering relevant stakeholders' observations, experiences and ideas concerning the Act, this report is intended to provide the ACT's law and policy-makers with experiential ideas from the coalface to contribute to 'best practice' FV legislation and practice.

Methodology

We conducted interviews with and received written submissions from two cohorts: professional stakeholders and people with lived experience of FV and the Act.

The first cohort included 33 interviews and written submissions, representing 27 of the targeted organisations and 38 individual stakeholders, as some interviews involved more than one representative. The interviews were primarily conducted face-to-face (n=30), with five completed by telephone and three providing written submissions. The questions (see Appendix A) were developed in consultation with representatives of the ACT Justice and Community Safety Directorate (JACS) and were designed to elicit the stakeholders' observations about and experiences with the operation of the Act and their suggestions for improvement. The interviews were audio-recorded and professionally transcribed, with participants' approval.

The second cohort consisted of eight people with lived experience of FV. As discussed in Chapter 3, the risk of distress for these participants was minimised in numerous ways. The interview schedule for this cohort (see Appendix D) included several open-ended semi-structured questions, which asked participants about their experiences with the legislation and their observations concerning its operation and ideas for how to make either the legislation or its systems better.

After the initial report was drafted, all participants were provided with a copy of that document via email and given the opportunity to confirm the accuracy of information; comment on the report's analysis and findings; and provide any other comments. Relevant feedback was then integrated into the final report.

Findings

The professional stakeholders had mixed responses to questions concerning the adequacy and efficacy of the current legislation and its implementation. Positive responses included a belief that the Act offered a broader definition of FV than the previous legislation, increased ease and speed of obtaining an interim order and had led to improvements in inter-agency communication, particularly with Legal Aid. However, stakeholders also had concerns about the ambiguity of some

provisions, the scope of the people and abusive behaviours protected under the Act, the lack of police enforcement of FVOs, resourcing issues and gaps in information sharing and co-operation between agencies and across parts of the justice sector.

Some of the diversity in stakeholder views appears to be derived from occupational-related experiences, observations and/or values. For example, the discretion to suspend sentences for breaching suspended sentence orders was seen more negatively by those employed in the FV sector, who prioritised the protection of the victim as paramount, compared with participants from the justice sector, who regarded judicial discretion as important. Two other examples of division and/or ambivalence were responses to the question about police-initiated safety notices (PISNs), with a majority of participants having (diverse) concerns, and the question of lowering the threshold for bail, with fairly equal numbers ambivalent, opposed to lowering the threshold (those representing the women's sector) or in favour (participants from the justice sector).

However, there were some questions that almost all participants agreed on. Specifically, both information sharing in FV systems and after-hours orders were seen as inadequate. Another point of consensus was in relation to the effects of the Act, with most of the participants not seeing a direct link between the 2016 amendments and culture change, either outside of or within the courts. The majority of practitioners also did not believe that the Act better protects FV victims than its predecessor.

In addition, there was agreement across sectors to some of the questions concerning potential changes and/or amendments. Most stakeholders agreed that the definition of FV should be expanded and technological abuse added. Many also were in favour of two amendments aimed at better protecting victims from legal abuse: preventing the subpoena and subsequent cross-examination of victims on their victim impact statement (VIS) and limiting disclosure of counselling communications or claims for financial assistance compensation in FV matters. Most participants also agreed that changes were needed with respect to how contact with partners or ex-partners was managed by those involved in perpetrator programs, with a minority in favour of legislative amendment.

Turning to those with lived experience of the FV orders, this cohort also revealed a degree of heterogeneity in their responses. However, they tended to highlight the negative aspects of what they had experienced, which likely correlates with their willingness to participate in the project in order to contribute to change. Their stories point to a number of problematic areas that could be addressed and/or improved. These include:

- the need for applicants to feel more protected and for their children to be better protected;
- the interaction of family law orders with FVOs, which may lead to survivors feeling blamed for their children's lack of safety;
- problems in applying for orders;
- variation in the competency and knowledge of staff, highlighting how a competent individual can make the process work and vice versa;
- the gaps in the legislation and/or its implementation that can facilitate the persistence of abuse;
- a serious lack of knowledge about Special Interim Family Violence Orders (SIFVOs);
- possible safety issues deriving from delay in service of orders, their duration and the response to breaches;
- specific cultural needs not being uniformly recognised; and
- limitations in the current definition of FV.

The primary themes identified from these eight individuals' interviews concerned deficiencies in information, inter-agency communication and continuity of services.

Discussion

Our findings support or complement several of the relevant recommendations made by the ACT Standing Committee on Justice and Community Safety (the Standing Committee) in their recent *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses*. Most of the professional stakeholder and lived experience participants endorsed expanding the behaviours considered as FV, either by broadening the definition or by providing more inclusive examples of the types of abuse that may be experienced, but are not presently well understood. We note that currently, perpetrators can continue to exert control through these legislative definitional absences and/or by their omission on orders.

There were several other recommendations by the Standing Committee on which we sought participants' views. The comments from the majority of participants supported these issues, including the need for further assessment about the service of orders; concerns about conflicts between orders from the Family Court and Magistrates Court; and the need for improved case management and information. However, most participants were not in favour of police initiated orders – either after-hours or PISNs.

Conclusion

Although their viewpoints might differ to some degree, depending upon the sector in which they work and/or their personal involvement with the Act, we conclude that all stakeholders are committed to improving the safety of those experiencing FV. Participants from both cohorts are also in agreement about what is negatively affecting the ACT's response to FV, namely, the translation of black-letter law into operation. Specifically, most safety issues were seen as deriving from the culture and/or the systems in place, which those interviewed largely saw as unchanged and marked by limited communication and co-operation between agencies. Consequently, FV victims are not necessarily being properly advised about legal constraints or alerted to potential high-risk events. Accordingly, most of the lived experience participants did not feel protected by the legislation and many professional stakeholders were at best equivocal in their responses about the protection of FV victims.

The lack of information sharing may be indicative of systemic failure. Each sector has the same aim – to protect FV victims. However, to do so, the different parts of the FV response must work collaboratively. We have noted that some agencies see themselves as doing so; however, all lived experience participants identified (different) gaps between FV services and criminal justice agencies.

Almost all participants felt that further changes are required to better support the ACT in improving practices in both the prevention of and responses to FV. Most supported other manifestations of FV being added to the definition, noting that these behaviours also must be included explicitly in FVOs, in order that police officers can act to ensure that breaches are treated as breaches. Many professional stakeholders also called for the legislation to be amended to better protect victims from legal abuse. Additionally, a number believed that victim protection could be improved by changing how contact with partners or ex-partners was managed by those involved in perpetrator programs.

Most participants did not support other legislative changes. For instance, giving police more power with PISNs was not regarded as positive by many who already had doubts about how police are

using (or not using) after-hours orders. On the other hand, giving the courts less power by reducing their discretion was also opposed by the majority of participants.

Recommendations

Our recommendations highlight several areas for legislative reform, but focus principally on issues relating to the operation of the legislation; it is in this context that our findings provide the strongest evidence for the need for improvements to move towards best practice in addressing violence in our families and communities.

We recommend:

- amending the Act to refer to specific types of abuse, especially technological abuse, and include specific examples of such abuse (e.g. electronic surveillance). Further consultation, especially with Aboriginal and Torres Strait Islander and culturally and linguistically diverse groups, should be undertaken in relation to cultural abuse (Recommendation 1);
- that all relevant stakeholders work towards addressing the issues identified with after-hours orders and further consider the practical advantages and disadvantages of adopting PISNs as an alternative model (Recommendation 2);
- further examination of the SIFVO regime, including collation of data on the use of such orders (Recommendation 3);
- that the intersection between ACT and Federal responses to FV and family law issues be considered as a matter of urgency, taking into account the relevant findings and recommendations of the Standing Committee and ALRC and relevant inter-jurisdictional practices (Recommendation 4);
- that any legislative and/or practical barriers to placing children on orders be identified and removed, to ensure children's safety is the paramount consideration (Recommendation 5);
- that the presumption against bail in section 9F of the *Bail Act 1992* (ACT) be reviewed in the context of a broader consideration of the terms and operation of that Act and relevant FV policies (Recommendation 6);
- that responses to breaches of suspended sentences in FV cases be reviewed in the context of suspended sentences generally (Recommendation 7);
- legislative reform to limit the subpoena of and subsequent cross-examination on VIS (Recommendation 8);
- legislative reform to limit disclosure of counselling communications in FV matters or claims for financial assistance compensation (Recommendation 9);
- that better systems be set in place to ensure that people experiencing FV are fully informed and therefore better equipped to protect themselves and suggest that external experts in the fields of FV and communications be funded to develop and test information systems for a sustained period of time, allowing for ongoing monitoring to illuminate and rectify persistent communication gaps (Recommendation 10);
- the establishment of a working group, led by the Coordinator-General for Family Safety, to review the findings and suggestions of this review and develop an effective information sharing model to enhance family safety, with particular consideration of cases where no criminal charges have been laid (Recommendation 11);
- that all relevant forms and orders be reviewed to ensure they are presented in plain English (Recommendation 12);
- that a link to Victim Support ACT appear on the ACT Courts and all FV agencies' websites in order to promote victims' access to appropriate support (Recommendation 13);
- the allocation of adequate funding to meet the needs of all affected by FV (Recommendation 14);

- further consultation with culturally diverse and Aboriginal and Torres Strait Islander communities, to ensure that responses to FV are culturally sensitive and appropriate (Recommendation 15);
- that the Government fund additional research, aimed at identifying the cracks that allow FV offenders to continue to exert control, including how these abuses take place (Recommendation 16);
- that the Government fund a biennial external independent review of the FV landscape in relation to both the legislation and its operation (Recommendation 17); and
- that the ACT Government, in responding to the recommendations of this review, give due consideration to the suggestions for improvements to legislation, policy and practice provided by those with first-hand professional and/or lived experience of FV (Recommendation 18).

1. Introduction

The Australian Capital Territory's (ACT) response to family violence (FV)[1] was substantially amended by the passage of the *Family Violence Act 2016* (ACT) (the Act), which came into effect on 1 May 2017 and was implemented as part of a broader strategy to address FV as a systemic, widespread and pervasive human rights violation. The Act complies with the view of violence against women set out on the website of the ACT Coordinator-General for Family Safety, which recognises that FV 'has negative consequences for all of us. It violates the human rights of those affected, reduces access to housing and employment, impairs children's health and development and is costly to our economy and our community'.[2]

The *Family Violence Act 2016* (ACT)

The Act was intended to build upon the work being done both in Australia and internationally to improve the way that society responds to FV. Importantly, it adopted 22 of the recommendations in the joint 2010 report by the Australian Law Reform Commission (ALRC) and New South Wales (NSW) Law Reform Commission (NSWLRC), *Family Violence – A National Legal Response*.[3] The primary aims of the Act are to:

- prevent and reduce FV;
- ensure the safety and protection of all those who fear, experience or witness FV; and
- encourage FV perpetrators to be accountable for their actions.[4]

The preamble to the Act makes specific reference to the ACT Legislative Assembly recognising that:

- FV is unacceptable in any form;
- freedom from FV is a human right that should be respected and protected at law;
- FV is best addressed through a coordinated legal and social response of assistance to victims; and
- the prevention of violence is assisted by promoting perpetrator accountability and by appropriate intervention by the police and the courts.

The preamble also includes statutory recognition of key features of FV, which were intended to underpin the operation and interpretation of the new Act.

[1] Throughout the remainder of this report, we use the term family violence (FV), unless referred to as domestic violence (DV) by a participant or when referring to relevant conduct under the previous legislation. References to FV are intended to reflect the definition in the Act and include behaviours previously referred to as DV.
[2] ACT Coordinator-General for Family Safety, *Family Violence* https://www.communityservices.act.gov.au/safer-families/family-violence.
[3] Australian Law Reform Commission (ALRC) and New South Wales Law Reform Commission (NSWLRC), *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010).
[4] *Family Violence Act 2016* (ACT) s 6.

Changes to the Definition of 'Family Violence'

The Act replaced the term 'domestic violence' with 'family violence', which is intentionally broad, to include all types of domestic, family and sexual violence.[5] This recognises that there are many ways that people can be violent against a family member and that people who suffer this violence should be protected under the law. The definition now includes:

- sexual violence or abuse;
- emotional, psychological and economic abuse;
- coercion or other behaviour that controls or dominates a person and causes them to fear for their safety or wellbeing, such as property damage, stalking, or harming an animal; and
- any behaviour that causes a child to hear, witness or otherwise be exposed to FV.[6]

In addition, definitions and examples of 'economic abuse' and 'emotional or psychological abuse' are included in the Act.[7]

The definition of 'relative' was also broadened to include someone with whom the person has a family-like relationship.[8]

Other Changes

To meet its aims, the Act:

- created ways to enforce family violence orders (FVOs);
- made amendments to simplify, streamline and provide flexibility about the matters to be considered in making a FVO;[9]
- sought to promote efficient access to the courts;
- recognised FVOs made elsewhere in Australia and New Zealand; and
- made numerous process changes, including:
    - allowing police to act as applicants in FVO proceedings;[10]
    - preventing a self-represented respondent from cross-examining an applicant;[11]
    - allowing an applicant to discontinue proceedings at any time;[12] and
    - providing that statements made during a preliminary conference are not admissible evidence.[13]

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[5] For example, in the context of sexual violence, using control or coercion to force a person to masturbate or forcing them to perform other sexual activities without their consent. See Legislative Assembly for the ACT, Family Violence Bill 2016 Explanatory Statement (2016) 10.

[6] See *Family Violence Act 2016* (ACT) s 8 for definition and examples. The Act removed conduct that is harassing or offensive, as it is covered by the more general 'emotional or psychological abuse', and 'threatening behaviour' (s 8(1)(a)(iii)). It also introduced a subsection that defines family violence as behaviour that causes 'a child to hear, witness or otherwise be exposed to family violence': s 8(1)(b).

[7] Ibid s 8(3).

[8] Ibid s 11(1)(c)(iv). See also s 11(2).

[9] For example, the amendments aimed to ensure that the court has flexibility in responding to new information about charges connected to an application for a protection order and also provides that only one general interim order may be made in relation to an application for a final order unless there are grounds for making further orders.

[10] *Family Violence Act 2016* (ACT) s 16(2)(b); see also s 99 for after-hours applications.

[11] Ibid s 63(2).

[12] Ibid s 61(1).

[13] Ibid s 62.

Under the Act, when deciding what conditions to attach to FVOs, a court must give primary consideration to the safety and protection of the affected person and/or any child directly or indirectly affected by the violence.[14] The court may, for example, prohibit a respondent to the order from locating or contacting the protected person, being at their home or workplace, or taking their personal property.[15] The Act also states that a person commits an offence if they breach a FVO, even where that breach occurs outside of the ACT. This offence carries a maximum penalty of five years' imprisonment and/or an $80,000 fine.[16]

Aims and Scope of the Review of the Act

This review of the Act aims to identify:

- whether the changes brought about by this legislation are operating as intended;
- the extent to which the amended Act has effected cultural or systemic change; and
- the potential for further legislative changes to support best practice in preventing and responding to FV.

Specifically, the review includes an examination of stakeholders' perceptions concerning the implementation of the Act, including whether police-issued safety notices (PISNs) should be implemented in the ACT and whether the after-hours orders are sufficient to offer protection to victims of FV. We are also interested in stakeholders' views about the need for other potential reforms to more effectively prevent and respond to FV. These include, but are not limited to:

- the types of FV covered under the Act;
- support services;
- extending protected confidences similar to the protections relating to sexual offence communications;
- evidentiary issues relating to victims;
- presumptions under the *Bail Act 1992* (ACT);
- reforms to suspended sentences;
- the extension of final FVOs; and
- information sharing.

By gathering relevant stakeholders' observations, experiences and ideas about the Act, we aim to provide an informed guide for ACT law- and policy-makers to contribute to 'best practice' FV legislation and practice which provides victims with better protection and facilitates improved co-operation between stakeholders, which would benefit both victims and the community in general. Accordingly, the benefits of the research will flow across the ACT community. However, as FV is more commonly experienced by women and children, it is anticipated that they will be the particular beneficiaries of the research, which accords with the National Plan to Reduce Violence Against Women and their Children.[17]

In undertaking this review, we acknowledge that FV is a vast and complex issue to explore and this project required a tight scope, seeking only to investigate some parts of the jigsaw.

[14] Ibid s 36.
[15] Ibid Division 3.6 – Conditions of Family Violence Orders.
[16] Ibid s 43(2).
[17] See Australian Government, *The National Plan to Reduce Violence against Women and their Children 2010 – 2022*.

Structure of the Report

The following chapter provides a brief overview to the Act's introduction, including the three recent inquiries in the ACT which played a major role in contributing to the drafting of Act. In Chapter 3, we set out our methodology. The following two chapters (Chapters 4 and 5) provide the responses of the professional stakeholders; the first presents their views of the current state of play and the second examines their responses to questions concerning potential statutory and process changes. Chapter 6 then turns to those with lived experience of the Act. In Chapter 7, we discuss the implications of our findings in the context of selected recent recommendations of the ACT Standing Committee on Justice and Community Safety (the Standing Committee). Chapter 8 contains our conclusions on the major questions of this review and recommendations to improve legislation, policy and practice.

2. Background

In Australia, FVOs have been described as the 'strategic lynchpin in the states' and territories' system-based response to' FV.[18] Orders are more commonly issued in Australia than Canada, the United States or the United Kingdom and 'have been central to the development of responses by activists and reformers', due in part to 'the crucial role of police (and the state) in the protection order application process'.[19]

Since the early 1980s, each Australian state and territory has enacted specific civil legislation to provide for the issuing of FVOs. These Acts were intended to offer FV victims (also referred to as complainants and/or as applicants for an order) a protective remedy, as the criminal law was failing to provide them with safety. That lack of protection by criminal remedies fits within the well-established principle of non-intervention in the private sphere of family life.[20] The legislation varies from jurisdiction to jurisdiction; however, one commonality is that all such laws are fluid, marked by multiple rounds of amendments.[21]

The 2016 changes in the ACT which are the subject of the present review followed a number of DV homicides in 2015, most notably Tara Costigan, who was killed by her former partner only a day after she took out what was referred to then as a domestic violence order (DVO) against him. The media focused on the Costigan tragedy[22] and the Government was encouraged to examine the DV legislation then in operation, the *Domestic Violence and Protection Orders Act 2008* (ACT) (the 2008 Act).

Three inquiries then took place, with the shared aim of investigating how the ACT was dealing with domestic and family violence (DFV). Each of these referred to the major report of the ALRC and NSWLRC and its 186 recommendations, 97 of which were aimed at individual states' and territories' legislative frameworks.[23] As we see next, all three ACT inquiries recommended that the 2008 Act be reformed. Released publicly in May 2016, these documents have been referred to as providing 'a map for reform in the ACT'.[24]

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[18] Kathy Wilcox, *Recent Innovations in Australian Protection Order Law – A Comparative Discussion* (Topic Paper No 19, Australian Domestic and Family Violence Clearinghouse, 2010) 22.
[19] Ibid 3.
[20] Australian Law Reform Commission (ALRC) and New South Wales Law Reform Commission (NSWLRC), *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010) 167.
[21] Renata Alexander, *Family Violence in Australia* (Federation Press, 2018).
[22] See for example Veronika Cox, 'The Tara Costigan Foundation's First Angel', *Her Canberra* (online), 16 June 2015 http://hercanberra.com.au/cplife/the-tara-costigan-foundations-first-angel/; Christopher Knaus, 'Family and Friends Walk for Tara Costigan', *Canberra Times* (online), 18 March 2015 http://www.canberratimes.com.au/act-news/family-and-friends- walk-for-tara-costigan-20150318-1m1wd1.html; Christopher Knaus, 'Marcus Rappel to Stand Trial for Axe Murder of Tara Costigan', *Canberra Times* (online), 15 September 2015 http://www.canberratimes.com.au/act- news/marcus-rappel-to-stand-trial-for-axe-murder-of-tara-costigan-20150915-gjmpbn.html; Megan Gorrey, 'Marcus Rappel Pleads Guilty to Murder of Tara Costigan', Canberra Times (online), 3 March 2016 http://www.canberratimes.com.au/act-news/marcus-rappel- pleads-guilty-to-murder-of-tara-costigan-20160302-gn92lf.html.
[23] ALRC and NSWLRC, *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010).
[24] ACT Standing Committee on Justice and Community Safety, *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses* (2019) 64.

The *Review of Domestic and Family Violence Deaths in the ACT – Public Report*

The ACT Domestic Violence Prevention Council (DVPC), at the request of the Attorney-General, undertook a review of FV-related deaths in the ACT.[25] This 'death review' scrutinised the 14 DFV-related deaths (11 cases) that had taken place over a 12-year time period (1 June 2000 to 30 June 2012).

The DVPC found that service providers had only identified and labelled behaviour as being DFV if assaults and physical injury had taken place. In addition, even when service providers had recognised antecedent behaviour as such violence, their responses 'were limited in scope, not recognising or responding to the actual risks to victims'.[26] In fact, only one of the victims had applied for and received an order, a Personal Protection Order, which could last for one year, instead of a DVO, which could have been in force for two years. Although a number of service providers in that case were aware that an order was in existence, the DVPC found that, during the last quarter of the victim's life, it was ignored by both parties. The DPVC also called for 'assistance [to be] provided to applicants for protection orders to ensure they are making an application for an appropriate order'.[27]

The DPVC's recommendations about the criminal justice and legal responses to DV concerned the need for increased 'information sharing and collaboration' between different types of service providers, such as mental health workers, police and child protection staff.[28] Further, because none of the DV matters that ultimately culminated in homicide had involved the police, they had not been a part of the Family Violence Intervention Program (FVIP) case-tracking or the Sexual Assault Wraparound Program.[29] Both the lack of orders and police intervention were in part due to the definition of DV in the 2008 Act not being broad enough to protect some of the victims. Specifically, emotional and psychological abuse were not included in the legislation. Therefore, the report recommended that:

> [t]he ACT Attorney-General continues to implement, as a matter of priority the Australian and NSW Law Reform Commission's recommendations relating to family violence in *Family Violence – A National Legal Response (2010);* to ensure that non-physical manifestations of family violence are recognised and addressed in ACT legislation.[30]

The *ACT Domestic Violence Service System: Final Gap Analysis Report*

The *ACT Domestic Violence Service System: Final Gap Analysis Report* was undertaken by the ACT Community Services Directorate (CSD). The analysis in that report, which began in 2015 and sought to provide an effective integrated response to DV, offered 12 areas for improvement, with 'wrap-around' support or case management mentioned most often by the respondents to the consultation.[31]

Several issues relating to the legal response to DV were also emphasised by the respondents. This report reiterated that protection orders are the primary means for DV victims to protect themselves

[25] ACT Domestic Violence Prevention Council (DPVC), *Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the ACT – Public Report* (2016).
[26] Ibid. 22.
[27] Ibid 41.
[28] Ibid 28.
[29] Ibid 29.
[30] Ibid Recommendation 23.
[31] ACT Community Services Directorate (CSD), *ACT Domestic Violence Service System: Final Gap Analysis Report* (2016) 19.

and their children. However, CSD recognised a number of issues associated with this, including the 'failure of legal systems to recognise, acknowledge and grapple with coercion and control as a key feature of intimate partner violence', 'the re-victimisation women experience and feel in their dealings and negotiations with the legal system, particularly the Family Court' and their difficulties in accessing legal representation and support.[32] In addition, issues with breaches of orders and how they are dealt with were highlighted:

> Responding to breaches of protection orders then becomes critical as a means for the system to support women's safety actions and to hold perpetrators to account. … However, failure of the current system to respond effectively to breaches of protection orders was repeatedly noted across this project.[33]

Most jurisdictions in Australia have police-issued protection orders, although the ACT did not at that stage. Relevant to our evaluation of the Act, the CSD report engaged with the debate concerning this type of order. On the one hand, the potential for women who are already disempowered by FV to experience an increased sense of disempowerment was acknowledged. The alternative view is that such orders undermine the message that 'the issue is between the perpetrator and the state not the perpetrator and the victim'.[34] While it was noted that ACT Policing are able to apply for an emergency protection order, the higher evidentiary burden (prior to the Act) made this unworkable. Most people consulted were in favour of police-issued protection orders and saw their absence in the ACT as a gap in the system.[35]

The Glanfield Inquiry[36]

In 2016, nine-year-old Bradyn Dillon was killed by his father, following a number of instances of previous abuse. As a result, another inquiry was established and conducted by Laurie Glanfield (known as the 'Glanfield Inquiry'). The terms of reference for the inquiry included identifying systemic issues (and their (in)effectiveness) affecting 'mandatory reporting, family violence (particularly where children are involved) and the sharing of information on at-risk families that arose from the legislative frameworks, policy, practices and operations of ACT Directorates and service providers.[37]

Glanfield found that the ACT had the lowest rates of FV-related homicide, assault and kidnapping anywhere in Australia and the second lowest incidence of FV-related sexual assault. Those data did not mean, however, that the ACT could afford to be complacent. Indeed, service providers were reporting an increased demand for FV services.

The limitations of the 2008 Act identified by Glanfield were similar to the DVPC's report, including a narrow definition of DV that did not recognise emotional, mental or financial abuse.[38] Glanfield also found that the ACT had not yet addressed a number of the ALRC's recommendations. These included reviewing the adoption of police-issued orders and the need for the definition of DV to be broadened to include 'behaviour by the person using violence that causes

[32] Ibid 41.
[33] Ibid 36.
[34] Ibid 46.
[35] Ibid 45.
[36] Laurie Glanfield, *Report of the Inquiry: Review into the System Level Responses to Family Violence in the ACT* (2016).
[37] Ibid 3.
[38] Ibid 21.

a child to be exposed to the effects of violence', in line with Recommendation 5.1 of the ALRC and NSWLRC report.[39]

Events leading up to the Act and its Review

In June 2016, the ACT Government released the *ACT Government Response to Family Violence*, which responded to these three reports and outlined an approach to FV in the ACT that responded to many of the primary recommendations concerning information sharing, transparency and accountability.[40] At least partly in response to the three inquiries, the Act was passed in August that year, together with the *Personal Violence Act 2016* (ACT).

According to the Standing Committee's 2019 *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses*:

> These legislative initiatives represent recognition of the need for establishment of specific legal frameworks to support and enforce domestic and family violence orders issued in Australia…In the ACT, as in other jurisdictions, the enactment of legislation and implementation of legislative schemes empowering the granting and enforcement of domestic and family violence orders are directed to recognition of the significant health and welfare issue in Australia that DFV presents across all ages and across all sociodemographic groups, but mainly as it affects women and children.[41]

As the Act has now been in operation for over two years, the ACT Government is monitoring its application, to assess whether it is achieving the intended changes.[42] The following chapter sets out the methodology for this review.

[39] Ibid 26. See also ALRC and NSWLRC, *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010) Recommendation 5.1.
[40] Legislative Assembly of the Australian Capital Territory, *ACT Government Response to Family Violence* (2016).
[41] ACT Standing Committee on Justice and Community Safety, *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses* (2019) 8-9. The Standing Committee's recommendations are examined further in the Discussion chapter.
[42] Yvette Berry, 'Safer Families Statement' (Media Release, 5 June 2018) https://www.yvetteberry.com.au/news/latest-news/safer-families-statement/.

3. Methodology

The principal methodology employed in the project was semi-structured open-ended interviews with participants who have experience with the Act, to collect their experiences, insights and suggestions concerning its operation.

Ethics approval was received from the Australian National University (ANU) Human Research Ethics Committee (HREC) (Protocol 2019/410). Given that FV disproportionately affects Aboriginal and Torres Strait Islander peoples,[43] the HREC was particularly concerned to ensure that the project complied with the *National Statement on Ethical Conduct in Human Research*.[44] Accordingly, key stakeholders, including the Aboriginal Legal Service (NSW/ACT) (ALS), the Aboriginal and Torres Strait Islander Reference Group of the DPVC, the Aboriginal and Torres Strait Islander Elected Body and Winnunga Nimmityjah Aboriginal Health Service, were emailed, seeking in principle support for the research methodology. All but one of the organisations contacted provided their support. Some also made suggestions for improving the cultural appropriateness of the methodology, all of which were adopted.

In this section, we describe the specifics of the method for each of the two groups consulted.

Professional Stakeholders

Design of the Interview Instrument

The interview questions were designed to respond to the scope of the project, as described in Chapter 1. The interview questions did not relate to individual cases; instead, they were intended to elicit the stakeholders' general observations about the operation of the Act and their suggestions for improvement (see interview schedule in Appendix A).

The interview began with brief demographic background questions, in order to situate the participant's comments by the type of organisation (for example, women's services) and ascertain how many years of experience, and the type of experience, they had had with FV legislation and issues in the ACT, which enabled us to describe at an aggregate level how much experience participants had had with the legislation.

Recruitment Process

The principal stakeholders targeted for consultation were representatives of government agencies and government and non-government service providers who have had direct and/or indirect involvement with the operation of the Act. We term these participants *professional stakeholders*. Thirty-seven organisations, agencies and government agencies (some with multiple individuals targeted) were contacted by email. This email included a request to contact the research team directly if they were willing to participate and/or invite relevant staff members to do so. The information sheet, consent form and the interview instrument were attached to the email (see Appendices A, B and C).

Stakeholders were given the option of a face-to-face, telephone or email interview. The last was described in the initial email as a 'dialogue', with participants understanding that they could express

[43] See for instance Domestic Violence Resource Centre Victoria, *Family Violence in Aboriginal Communities* (2016).
[44] Australian Government and Universities Australia, *National Statement on Ethical Conduct in Human Research* (2007, updated 2018) Chapter 4.7.

further ideas after completing the instrument. Face-to-face participants were also advised that they could follow up with additional comments afterwards if desired.

The main consultation group for the project were professionals involved with the Act, through their roles with justice legislation, FV and/or employment in government directorates. The list in Table 1 was developed by the research team, in consultation with the Government, to ensure that the key organisations involved with the administration of the Act were given an opportunity to contribute.

By speaking to a range of stakeholders from different types of organisations (including legal and other service providers, government and non-government agencies and mainstream and intersectional representatives), we were able to triangulate our findings from different perspectives.

Table 1: Organisations Targeted to Recruit Professional Stakeholders

Key Justice Legislation Stakeholders	
Aboriginal Legal Service ACT Bar Association ACT Corrective Services ACT Courts and Tribunal ACT Director of Public Prosecutions ACT Human Rights Commission ACT Law Society	ACT Policing Family Court of Australia Civil Liberties Australia Legal Aid ACT Legislation, Policy and Programs, JACS Women's Legal Centre
Key FV Stakeholders	
Beryl Women's Inc Canberra Rape Crisis Centre Domestic Violence Crisis Service (DVCS) DVCS Room4Change Doris Women's Refuge EveryMan Family Violence Intervention Program	Men's Referral Service Relationships Australia Women's Centre for Health Matters Toora Women Inc Victim Support ACT YWCA
Key Directorates that Use or are Impacted by the Act	
ACT Chief Minister's Directorate (Women's Office) ACT Coordinator-General for Family Safety ACT CSD, including Child and Youth Protection Services (CYPS)	ACT Education Directorate ACT Health Directorate Canberra Health Services
Intersectional Stakeholders	
Aboriginal and Torres Strait Islander Elected Body Aboriginal and Torres Strait Islander Reference Group of the DVPC Advocacy for Inclusion A Gender Agenda	AIDS Action Council Integrated Women's Network Multicultural Women's Advocacy Inc Winnunga Nimmityjah Aboriginal Health Service

Conducting the Interviews

There were 33 interviews and written submissions obtained, representing 27 of the targeted organisations and 38 individual stakeholders, as some interviews involved more than one representative. The interviews were primarily conducted face-to-face (n=30), with five completed on the telephone and three providing a written response.

Most of the interviews that were conducted in person took place at the participant's workplace. Potential participants were offered a different location; for example, if they did not want their manager to know they were participating in the project, an alternative venue was selected.

Interviews were conducted in September and October 2019, with an average time of one hour per interview.

At the commencement, the interviewer confirmed that the participant was willing to participate in the study and invited participants to ask any questions about the project. Participants were reminded of the information sheet that they had previously received and were provided with another copy if required. They were also reminded that they were free to withdraw from the interview at any time. If that occurred, any recordings of their conversation with the interviewer, and any records of their responses, would be deleted. Alternatively, they were advised that they could choose not to answer any question which they felt uncomfortable answering. Participants then signed a copy of the consent sheet. All participants agreed to their interview being audio-recorded (with subsequent professional transcription). The interviewer also took brief written notes to provide an additional record of the participants' comments and these were cross-checked where required against the transcription.

Minimising Risk

As this cohort were professionals involved in the administration of the Act, it was not anticipated that they would suffer any significant distress. If they made comments that were critical of other agencies, reassurance was provided that this would not impact on them adversely.

There were no potentially identifying demographic variables collected, other than the participant's approximate length of experience with the relevant legislation. Therefore, we anticipate little risk of identification. We acknowledge that there is some risk of re-identification, especially in respect of smaller agencies, but we have reduced the risk by being as generic as possible (e.g., not attributing responses to any particular specific service providers). Further, none of the information provided to the researchers has been conveyed to their employer/s or other agencies, other than in aggregate form in the report. Any quotes from participants have been de-identified in such a manner that employers could not easily identify an individual.

Lived Experience Stakeholders

In order to ensure that we obtained the perspectives of those most affected by the Act, we also requested the assistance of relevant professional stakeholders in gaining access to people with lived experience of FV. By gathering information on how these people's FV matters were dealt with by the justice system, we sought to assess how the Act is working in practice. For the purposes of this report, a person with *lived experience* is interpreted as someone who has experienced and/or perpetrated FV, although it was anticipated that most of these participants would be victims, given that we relied on FV support agencies to provide information about the review to their clients.

It was proposed to undertake 10 lived experience interviews to ensure the benefits of the research outweighed the potential risks, discussed further below. On the other hand, there may be benefits to people with lived experience, through giving voice to their experiences, which can be helpful, cathartic and empowering for some people who have experienced violence.

Design of the Interview Instrument

A brief open-ended semi-structured interview instrument was designed for the participants with lived experience (See Appendix D). The questions aimed to elicit participants' experiences with the Act and their observations about certain aspects of its efficacy and suggestions for improvement. The interview questions did not focus on the person's personal history of violence, but rather on their encounters with the legislation.

The instrument was drafted with the aim of ensuring that participants would have the opportunity to tell their stories in their own words. This was designed to ensure a person did not feel judged by the wording of a question.

A draft was sent to the Aboriginal and Torres Strait Islander-led organisations listed above, with a request for advice on content and/or the interview process. We were guided by the feedback received and revised the instrument and aspects of the proposed interview process accordingly. For example, we arranged to hire an Aboriginal and/or Torres Strait Islander woman to act as interviewer for any Aboriginal and Torres Strait Islander people with lived experience.

Recruitment Process

We asked a number of professional stakeholders, including the Victims of Crime Commissioner, DVCS and several women's refuges, to identify people with lived experience who had entered, but were not currently involved in the legal system, and were considered to be at low risk of harm, including retributive violence, as a result of participating in the review. Using the means that the support agencies considered to be the safest (e.g., telephone at the support service), we requested that the relevant staff advise prospective lived experience participants about the review and provide the researchers' contact details. We responded to any expression of interest in participating, rather than initiating contact ourselves.

Via the support service, before deciding whether to participate in an interview, the potential participants were provided with a copy of the information form, consent sheet and interview questions (see Appendices D, E and F). We asked all gatekeeper agencies to convey that the decision whether to be interviewed would not impact on the services that they would receive from that or any other service.

Once a prospective participant contacted us, we provided them the contact details for a range of support agencies and invited them to have a support person of their choice present for the interview.

Conducting the Interviews

It is acknowledged that stakeholders with lived experience of FV may be more likely to experience distress, as they would be discussing their personal, rather than professional, experiences with the Act. Many FV survivors also report feelings of shame in relation to the violence, which may correlate with self-blame.[45] Therefore, we strove to ensure that people with lived experience would feel supported and believed during the interview. As participants could be re-triggered through recognition that the operation of the Act had negative and perhaps distressing consequences for them, our approach recognised that careful facilitation and readily available support were needed. In addition, it was decided to further minimise risk by limiting interviews with people in this cohort to face-to-face. This helped to ensure that appropriate support could be provided if the researcher sensed any element of distress on the participant's behalf. However, in a small number of cases, the participant indicated their preference for a telephone interview and so we obtained approval from the ANU HREC to conduct the interview in line with the participant's preferences.

As stated earlier, the questions were constructed in a way to minimise the chance that participants would feel that they being held accountable or blamed in any way for the violence. To further decrease this risk, the interviewer began each interview by emphasising to the participant that there

[45] See for instance Felicity Harper et al 'The Role of Shame, Anger, and Affect Regulation in Men's Perpetration of Psychological Abuse in Dating Relationships' (2005) 20 *Journal of Interpersonal Violence* 1648.

was no right or wrong way to respond to the questions. In addition, the interviewers were sensitised to the need to not interrogate or challenge the participant in any way that could be construed by them as victim-blaming or -shaming. At the beginning and end of the interview, the interviewer thanked the participant for taking the time to tell their story and highlighted the importance and invaluable contribution of their voices to the project and for creating an improved legal response to FV.

The lived experience interviews (n=8) were conducted from early September until mid-December 2019.[46] Half were conducted in person, two chose to be interviewed by telephone and two provided written comments. The latter were permitted by a special exemption from ANU Ethics, as the individuals expressed that preference.

Minimising Risk

The information sheet reflects the potential risk of psychological, social and legal harms that might arise as a result of participating in this review. It also contains a list of relevant support organisations. This form was given to participants at the outset of the interview and participants were reminded at the end of the interview that free services were available. They were also offered the option of having a support person of their choice attend the interview. That person was required to sign a confidentiality agreement to ensure they maintained the participant's confidentiality.

If lived experience participants described a well-known case during their interview, the details of that case have been modified or deleted in order to ensure confidentiality.

We also implemented a protocol for best practice if a participant appeared to become distressed at any stage. The interviewer was to offer to suspend the interview and not resume until such time as the participant had the opportunity to discuss with and/or contact a support person. At the end of the interview, the interviewer offered to check in with the participant in the coming week to make sure that they were not distressed by the interview experience.

Analysis of Interview Material

A thematic analysis of the 626 pages of interview material was carried out using NVivo to identify key themes arising from our interviews and the written comments received. This analysis also allowed us to identify different perspectives on the operation of the Act across participant cohorts, e.g., differences between stakeholder groups (justice vs FV stakeholders).

Re-consultation

A draft report was compiled, based on the interview data and analysis. All participants (including all relevant Aboriginal and Torres Strait Islander stakeholders) were provided with a copy of this document via email and invited to respond electronically, by telephone and/or face-to-face to confirm the accuracy of information; comment on the report's analysis and findings; and provide any other comments.

However, stakeholders did not have the opportunity to alter the research team's findings. If a stakeholder suggested changes, they were incorporated as appropriate within the working draft.

[46] Due to a miscommunication with one of the support agencies, several would-be participants contacted us after we had completed our consultations. Two expressed significant disappointment about having missed their opportunity to contribute to the review and we accordingly obtained ethics approval to extend the consultation period to include their experiences.

Where necessary, we noted in the report any circumstances where stakeholders did not agree with observations made by the researchers.

Limitations

We note the limitations inherent in the restricted scope of this review, both in terms of the sample size (n=54 across both cohorts), the tight timeframe in which the review was conducted (see Appendix G for timeline) and the limited areas of the legislation examined. In particular, the research team was guided by JACS in developing the interview questions, which focused on particular areas of policy interest to the ACT Government.

Another caveat concerns the risk that professional stakeholders were not self-selecting. Organisations may have recruited only those employees most likely to give the answers the organisation would prefer to be heard, which could bias the results.

We also recognise the potential for selection bias in the lived experience cohort, as those with particularly extreme experiences of the Act (whether good or bad) may be more likely to want to tell their story. We do not make claims that their views are representative of the broader ACT community who have experienced FV, but their voices nevertheless provide a rich and instructive source of information.

A final limitation of our review must be noted and addressed in future research. Despite our attempts to engage with Aboriginal and Torres Strait Islander-led organisations, we unfortunately did not have the opportunity to include the perspectives of any Aboriginal and Torres Strait Islander lived experience participants (although we did have input from several Aboriginal professional stakeholders). We recognise the vital importance of ensuring that Aboriginal and Torres Strait Islander voices are heard and responses to FV are culturally appropriate and sensitive. As set out in Chapter 8, we therefore recommend further consultation with Aboriginal and Torres Strait Islander communities, including lived experience participants.

4. Findings – Professional Stakeholders' Perspectives on the Current FV Landscape

The findings from interviews with professional stakeholders are set out in two chapters. This chapter presents their perspectives on the current FV landscape in the ACT. As this chapter shows, there was heterogeneity in the professional stakeholders' experience with and attitudes concerning the adequacy and efficacy of the current legislation and its implementation. As set out below, some of the diversity appears to be derived from the participants' occupational sphere. In Chapter 5, we present our findings on the participants' opinions about a number of proposed amendments and changes in process.

In order to ensure participants' anonymity, we adopt acronyms to refer to the organisations which participated in the study (see also Table 1 for the list of organisations contacted) and provide only brief details about their expertise, in participants' own terms. Our findings draw on contributions from the following participants:

- Directorate refers to an ACT Government Directorate representative:
    - Directorate#1, 15+ years
    - Directorate#2, 35+ years
    - Directorate#3, 15+ years
    - Directorate#4, several years
    - Directorate#5, 1 year
- FVW refers to FV organisations that represent the women's sector:
    - FVW#1, 10+ years
    - FVW#2, 15+ years
    - FVW#3, 5+ years
    - FVW#4, many years
    - FVW#5, 15+ years
    - FVW#6, several years
- FVNW refers to FV services that are not part of the women's sector:
    - FVNW#1, ~10 years
    - FVNW#2, 5+ years
    - FVNW#3, 5+ years
- JUST refers to individuals working in a justice-related field, eg, police, lawyers and judicial officers:
    - JUST#1, experience not stated
    - JUST#2, 15+ years
    - JUST#3, 2-3 years
    - JUST#4, 20+ years
    - JUST#5, 10+ years' experience
    - JUST#6, various levels of experience
    - JUST#7, experience not stated
    - JUST#8, 25+ years
    - JUST#9, experience not stated
    - JUST#10, 10+ years
    - JUST#11, 20+ years
    - JUST#12, 15 years
    - JUST#13, 2-3 years
    - JUST#14, 5+ years
    - JUST#15, 15+ years
    - JUST#16, 25+ years
    - JUST#17, 20+ years

- INTER refers to a participant representing some type of intersectional agency:
    - INTER#1, 1 year in current role but no direct experience with Act
    - INTER#2, 20 years' experience

Operation and Implementation of the Act

Positive Observations

Some participants recounted positive aspects they had observed with respect to the operation and implementation of the new legislative framework, particularly when compared to the previous framework. In their view, these changes to the operation and implementation of the Act had resulted in improved outcomes for victims.

JUST#17 stated: 'I like the way the Act's set out. I think the Act's got a nice, clear structure to it'. Directorate#2 felt that 'the inclusion in the Act of coercion and control and emotional abuse… have enabled a more robust conversation with people experiencing family violence'. Others agreed that the broadening of the definition has been helpful. For example, FVNW#2 commented on the benefits of including financial abuse, as well as

> being able to kind of put together and package what the violence and abuses look like over time… [and] being able to put that information together in a way that [I] can actually put forward and have conversations with Legal Aid around.

The following comments are also illustrative of the perceived improvements under the Act:

> One of the things we really noticed around the new Act was the expansion of the definition of family violence. And in a way, *that was quite a game-changer; acknowledging the course of control and it's not just the focus on physical violence,* again including the children, children being exposed to family violence *What was really interesting though is when it was rolled out, the changes actually didn't come along with the Act at the time. So, magistrates were still making judgments based on the old legislation, so there was a lot of work that had to be done there* (FVW#3).

> I think what we're seeing is a broader scope of offences... because the definitions have broadened out, so *I think that's made a big difference.* So, as for some feedback from staff, we've got a variety of perpetrators, where the victim is not intimate partner, it's a brother, sister, mother, father (JUST#2).

> I think the examples [of FV in the Act] are really good. *I think the listing of emotional and psychological abuse has really sort of nailed it on the head.* There is a *reference to, I think, coercive and controlling behaviour, probably not as strong as it needs to be,* but a pattern, certainly in later parts in the Act, it references a pattern of behaviour (JUST#13).

> Jo Wood's role had a major impact… systems only get you so far, people get you the rest of the way working within that, and I think Jo's role in the coordination of these activities, they're linking in to what are the action plans look like for various different directorates...bringing people to the table, keeping it very real with lived experience and what people are seeing within

> Canberra. I think probably continuing to uncover unearthed issues and drive reform has probably made a more significant change than necessarily just the shifting in the legislation (Directorate#5).

Under the 2008 Act, both parties needed to consent for an interim order to be continued,[47] which was perceived as leading to a backlog. This is no longer required under the Act, which was perceived by one participant as

> a good change, because *it means we can focus on the order, rather than these procedural aspects and court time. Certainly, for victims of family violence, not having to deal again with an application* – essentially, an application to have an order, over and over – *is a good thing* (JUST#3).

This participant also reflected positively that 'the other thing is that it's quite quick between interim order, conference, and hearing, really'. Improved processes were also noted in relation to the increased flexibility of FVOs:

> So, I guess for us when I was looking at some of the amendments and some of the new, the flexibilities, *I think the biggest thing is the flexibility around creating and simplifying the family violence orders* (Directorate#1).

Another participant commended the 'fact that FVOs from anywhere else in Australia are recognised without the need for further applications is a very positive and long needed change' (FVW#2). For FVW#3,

> I guess, really importantly, *some of the real key things from the new Act [are] the special interim family violence orders and court-initiated orders.* Some real positives around those, but again, both of those when they rolled out, real gaps in processes. That was where we noticed.

Some felt that FV was being viewed differently, coupled with changes to how support is offered to victims:

> But that shift, and this is what happened in the past because there was this whole onus that we put back on families and said, "Why doesn't she leave? Or why …did she keep herself from that situation? Or why does this partner continue to stay in this relationship?" So we know now not to ask those questions. *We… now [consider] how do you work with that pattern? How do you protect within that space?…You don't walk in there anymore expecting families to keep children safe or expecting you walk away. You go into the situation understanding and coming up with access [to support]* (Directorate#1).

A seemingly accompanying change recognised by some stakeholders such as FVW#6 was the courts' recognition of these forms of FV now included in the legislation:

> When people are applying for orders, they're recognising social isolation, economic abuse, financial control, all of those things, in order to obtain an interim family violence order.

[47] See *Domestic Violence and Protection Orders Act 2008* (ACT) s 36; ALRC and NSWLRC, ALRC and NSWLRC, *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010) 688.

Another positive in FVO operation mentioned was the introduction of police liaison officers by the Australian Federal Police (AFP):

> AFP officers being able to apply on behalf of clients. So, the cohort that we're sending to order liaison officers are people that physically can't get to court for whatever reason, for illnesses, but the other cohort is a really practical one…So, they reside in Jervis Bay, they have to come to ACT to get orders. So, all the liaison officers have picked those up (FVW#3).

In addition, the simplification of forms was perceived as helpful:

> So, there was a very long process of working with the stakeholders to develop a form that was easy to navigate for applicants of Family Violence Orders, but also was easy for people exercising judicial decision-making to get all of the information hopefully that they needed to be able to make an interim or final decision for a Family Violence Order (JUST#10).

JUST#8 supported the reforms, which mean that self-represented respondents are no longer permitted to cross-examine applicants directly. In addition, JUST#8 noted that:

> under the old Act, it was a general discretion [whether to order costs against an applicant]. Now it's applicants only have to pay costs if they're frivolous and vexatious and … and I think that is an important change because it takes away that fear of costs orders being made and that being a deterrent to applying for orders that are needed.

Critiques of the Act and its Operation

Unsurprisingly, participants also noted some negative changes and/or experiences with the operation and implementation of the new framework.

<u>The Scope of the Act's Operation</u>

JUST#14 pointed out that confusion persists about whether people with disabilities living in a shared environment are covered by the Act:

> Certainly, one issue that keeps coming up again and again is the issue of whether or not people in a disability home are protected and whether they are protected from family violence from their carers. There's a massive perception that they're not, that we wrote them out of the Bill. We specifically wrote them into the Bill and included an example of what a family-like relationship would cover as a person with a disability and their carer.[48] But, for whatever reason, that kind of hasn't stuck or that message never got through.

Other participants were concerned that, although economic abuse was included as part of the definition of FV,[49] there was little case law on this. For instance:

> Trainings were delivered to support/case management workers about the new Act and further, specific trainings about the inclusion and what constitutes

[48] See the example listed under s 11(2)(g) of the *Family Violence Act 2016* (ACT).
[49] Ibid s 8(1)(a)(iv).

> economic abuse. However, *I have not witnessed yet a single case that we have supported to seek legal assistance due to economic abuse where the legal service accepted to act on behalf of the woman* (FVW#2).

Concerns about Specific Legislative Provisions

Section 71A of the Act provides that a 'party may only seek further particulars of an applicant for a protection order with the court's leave'. This issue was mentioned by a justice stakeholder and was seen as compounded by the perceived limited scope of the right to appeal:[50]

> So, for example, you have to get leave to request particulars now…and I've been involved in a decision where a Deputy Registrar refused that leave. One of the issues, I think, is the lack of appeals from decisions like that. My view in that matter was that that decision had been wrongly refused, *but there was nowhere to go.* So, I think some more appeal rights would be a [good] thing (JUST#8).

JUST#8 was also concerned about the ambiguity of the matters to be considered under section 14 when making an FVO. In particular, section 14(1)(e) refers to 'any hardship that may be caused to the respondent or anyone else by the making of the order'. According to JUST# 8, there is a lack of clarity about how this is weighted against safety and the other listed criteria. JUST# 8 stated:

> One of the other things I've had experience with recently is a case where I acted for an applicant against a serving AFP officer and he was seeking to resist the making of an order on the basis that the order would cause him hardship because he wouldn't be able to be on… the beat with a gun. My understanding… is that the old legislation[51] had a greater sense of priorities to it. *So, it made it clear what was to be prioritised and what was not*…My argument was hardship should only be relevant if it's going to produce a disproportionate outcome, which it didn't in this case because the guy had actually used the gun in the family violence.

In addition, FVW#3 expressed reservations about the use of court-initiated orders:

> Court-initiated orders are really only just finding their feet, and when they started to find their feet, we were finding that victims of crime had no idea that a court-initiated order had been granted. Not only that, victims of crime were getting messages [saying]: 'There's this order in place. I can't talk to you' and not having a clue what was going on…the [Legal Aid] protection order unit now has advised that they will be notifying the victim of crime. This is literally days in, so we don't know if it's happening or if it has happened yet.

Implementation Issues

Two stakeholders from the women's sector commented on a decrease in the enforcement of FVOs by police and the burden placed on women to produce evidence showing abuse:

> I have initially observed a marked increase in enforcement of FVOs by police. I have further observed that this initial enthusiasm is passing fast, with reports

[50] *Family Violence Act 2016* (ACT) ss 92-97.
[51] See *Domestic Violence and Protection Orders Act 2008* (ACT) s 7.

> of breaches starting to be taken lightly again. Due to the above, I have also observed that *the level of confidence of women in FVOs as a protection mechanism had improved, but is returning to previous levels of very low confidence.* Again, it appears to me that this is because reports to police of breaches, reports of harassment, reports of fear due to threats, are once again being taken lightly, with *the onus placed upon women to produce acceptable evidence* (FVW#2).
>
> *There's still the burden on women to provide evidence of an incident that may have happened and that's really hard to do with the changes that are now being made to the legislation around the definition of the DV* [sic]. So, when you're talking about financial abuse, emotional abuse, those things were there previously, but stalking and the cyber abuse, that's difficult at times for women to prove, but the burden's on them to prove that. *It's not on him to prove that he's not doing it* (FVW#5).

FVW#6 expressed concerns about the operation of the provisions for a Special Interim Family Violence Order (SIFVO):[52]

> Because they're not technically the applicant, they have no control over that process…And the order actually on the paperwork …actually just says until the next in court day. And it's only really extended each time the matter's in court, because it's court-initiated and it travels alongside the criminal proceedings. So again, a real level of disempowerment for the client….I've had a matter where I've been in court with a client until 3:00 in the afternoon, helping them apply, and we lodge the paperwork, and then the courts call up and say, 'We can't listen to this matter because there's already a court-initiated [one]'. The client didn't know that there was a court-initiated, and they've spent the whole day at court applying for an order that's actually already in place and is an order that doesn't have the conditions that they're comfortable with or that they want (FVW#6).

JUST#13 felt that the provisions in the Act which may require a respondent to undertake programs as a condition of the FVO[53]

> are really under-utilised, in fact they're so under-utilised that I would say they're not utilised. And that's because there are difficulties in the way it's currently framed…what it says is, the court 'can impose a condition to require the respondent to take part in a program of counselling, training, mediation, rehabilitation or assessment, if satisfied that, having regard to the respondent's circumstances, the respondent is reasonably likely to participate and the program is reasonably likely to reduce the risk of the respondent engaging in further violence'. So those two things are far too high a bar to achieve on an interim basis…and it's never used, so why put it in there? (JUST#13).

JUST#7 also noted that this section 'is rarely used and there are very limited referral options available'. FVNW# 2 agreed that this provision was not being used, but expressed concern about its potential resource implications, if it were to be used:

[52] See *Family Violence Act 2016* (ACT) ss 22, 26, 30-32, 87, 88, 151.
[53] *Family Violence Act 2016* (ACT) s 38(2)(n).

> I know that under the new Act, there's a section in there around being able to utilise men's behaviour change programs in part of the …legislation and it hasn't been utilised as yet…When we first saw that, we were a little bit nervous about, just from the capacity perspective that, as a diversionary process, men's behaviour change programs are used widely across Australia, but *we don't have that kind of capacity currently in the ACT.* But that sort of seems to be a bit of an ongoing conversation that's happening around if that was going to be used, what that would look like?

Resourcing Issues

Some participants raised concerns about the consequences of inadequate resourcing:

> because the Legal Aid office acts for the vast majority of applicants and they've obviously been swamped with applications, their process appears to have been under the new Act that they will almost exclusively act for applicants on what's called a duty basis…which means that their lawyers are only there on the day. And you just turn up and it's whichever lawyer's got 10 minutes to speak to you, that's your lawyer for the day. *There's no continuity of representation* (JUST#11).

JUST#8 was concerned about the workload implications for legal practitioners:

> one of the problems is, *someone will brief me to appear. I always have to charge a daily fee, because you just never know how long you're going to be there.* You have to just block out the whole day, and you have to prepare for a final hearing, which usually takes me a day as well. So, I usually charge a day to do one of them, and then it's quite often the case that they're not reached, and that has a couple of consequences. One is, if an interim order's been made, the interim order can then be enforced. So, I had one, interim order was made in March this year. They went for a return conference in April. I wasn't involved at this stage. Didn't settle, listed for final hearing in August. I was briefed, ready to run it, didn't get reached, got adjourned to December. So, the interim order's then in ….And none of the evidence has been tested. … it creates an unfairness I think where interims are given, for good reason, on pretty... not very much. So, one of the difficulties is about not knowing whether your matter will be reached, and that's always the case to some extent in litigation, but it's very pronounced there because they list so many and there's no way they can all be reached.

The lack of resources was also raised in the context of supporting women with disabilities and/or people living in disability homes and their protection under the Act:

> Because no money has gone into service provider awareness raising and so, … I would say that it had *very little influence or effect at all in women with disabilities, in any accommodation situation, actually finding a pathway to safety* (INTER#2).

Interim Orders

JUST#16 expressed concern about the length of interim orders, as well as the problems inherent in the *ex parte* process:

> So, the notion that you would commence with an *ex parte* interim order, you'd have a conference to seek to resolve it, then you'd have a final hearing if it wasn't resolved. And so that pattern remains in place, and I think the fundamental problem, both for complainants and for respondents, *is the duration of it.* So, you've got an *ex parte* order which can give a complainant immediate protection, but the general approach to law, the *ex parte* orders, is that, by nature, they're unfair… They need to be justified by compelling circumstances…[The c]urrent regime is, if you obtain an *ex parte* order, that's often attained on very limited evidence. That remains in place for four-to-six weeks until you go to a conference. If it's not consented to, it remains in place for a number of months for hearing… So, what it means is you've got *ex parte* orders that are in place for a long period of time, and you've also got, at the other end of the equation, the complainant is locked into conflict with the alleged perpetrator for an extended period of time.

Information Sharing and Inter-agency Co-operation

Positive Observations

Several participants (across different sectors) recounted positive observations or experiences of increased co-operation and communication occurring amongst FV stakeholders since the implementation of the Act, although some also identified room for improvement:

> *I think we're seeing great collaboration between stakeholders in relation to trying to prioritise victim safety.* So, I mean, this agency participates in the family violence intervention meetings, and we're seeing really good case management there…[but] *it still has got room to improve* (JUST#12).

> I think from our perspective in terms of the communication around, particularly around use of violence and that kind of thing, is that there's an ongoing conversation needed. *Certainly, we're having a lot of conversations at the moment around how do you actually track men's behaviour patterns over time, and keep men visible in the system, particularly given that they often [may] have multiple partners… and impacts a number of people* (FVNW#2).

> I think there has been a level of improvement in terms of co-operation and communication. *…it still doesn't go far enough to make it as easy and also for the process, for the experience of the clients to feel safe during this* (FVW#4).

> But… we've…definitely moved to that space of acknowledging the things that we didn't do well as agencies and as agency partners…So, we have moved into that space where we were looking at less subpoenas. We can, because people give you that information, because we can share it under the *[Children and Young People] Act [2008* (ACT)*]*. We don't have to go and subpoena everything. We could actually basically say, so we can come together as a care team (Directorate#1).

> I think the Family Violence Intervention Program itself, the coordinating committee, but also the case tracking mechanism that sits under it, are kind of evidence that [there] is *quite a bit of goodwill to co-operate and collaborate.* Agencies involved in implementation of the Act do invest quite a lot of time, particularly in case tracking (Directorate#4).

Another noted they had a 'great' relationship with Legal Aid. They were keen to point out, however, that all collaboration should only be done with the client's consent:

> *their Protection Unit is excellent and we're very impressed with their work* and always feel that they prioritise clients and work very hard and do a really great job. … I suppose the one thing, and I probably see this over and over, about co-operation and communication is, *…we feel very strongly that all co-operation and communication for clients should be with client consent* (JUST#3).

JUST#10 identified 'really good networks' with the police, DVCS and Legal Aid, adding:

> certainly, we're all learning, finding the issues that arise with the implementation of the legislation together and working on them collaboratively. [there's a]…a real higher level of co-operation, and I think it is probably higher than it was towards the end of the practice under the previous Act, simply because processes had been bedded down for longer under that legislation, so you didn't require as much nuancing at that time.

FVW#3 worked closely with Legal Aid and also co-operatively with the police:

> There is definitely a better understanding of risk. So, there's a lot more co-operation around discussing those persons that are high risk of reoccurrence of family violence or imminent risk of safety. We have co-operation from AFP on that, taking into account if we need to delay service of orders by a few hours, so that communication has improved. *There's a really good open channel for feedback…*

A justice sector worker noted the changes they had observed over recent years, remarking upon the 'very strong collaboration between the two key support services based at the court, so Legal Aid and DVCS':

> I mean, to be frank, the DVCS court advocacy program kicked off 10 or 12 years ago when there just was very insufficient support at the court. They logged one Legal Aid solicitor on at that point in time in the morning, and so they were sending non-legal staff down there to help. *We're now looking at two very professional teams down there, working well together, and working out when legal advice is required, but providing an option also if someone doesn't want legal advice or representation, to seek expert input. That relationship I think works very well for vulnerable Canberrans* (JUST#6).

<u>Gaps in Collaboration</u>

Notwithstanding the foregoing positive comments, several participants expressed concern about gaps in collaboration. According to Directorate#3, 'we all have these siloed information systems. So [each Directorate] has their own records system, and CYPS has their own record system and... there's no common sharing of that [information]'. Directorate#4 noted:

> *there's definitely not as much collaboration as there could be across the justice agencies. Any kind of collaboration with the courts around anything is quite hard.* Now they've been going through a complete rebuild of their building and a complete rebuild of their system. So, we've been trying to do some work around data.

Another justice stakeholder (JUST#13) was happy with cross-referrals between their agency and DVCS, but felt that there were issues with police involvement:

> *…back to that question about collaboration, we have no referrals from the police* [even though] we've done education sessions, they've got the email direct, they can refer directly in. …and it's not happening [though] it's such an integral way of getting women [and men] into the system and being able to provide all of that.

A participant in the women's sector had also noticed some gaps:

> So, obviously, *there's the Family Violence Coordination Unit within the AFP that really understands risk and family violence, but sometimes you do, personality-wise, have frontline patrol that don't understand it, or people at the court that don't quite understand it,* or have old school views on things (FVW#6).

Finally, FVW#1 noted that there were aspects of co-operation in the ACT that were better than any other jurisdiction in which they had worked, but 'things went awry' once the court system became involved:

> *I think… the ACT is a really easy jurisdiction to work for in terms of working with stakeholders. And it doesn't really matter how vastly different their organisational culture is to ours.* The abilities to work with systemic advocacy in the ACT that's better than any other jurisdiction I've worked in around sexual assault and there's been a few that I have worked in. I think the inter-agency communication and working relationship can take people to a certain level [but when]… *it hits the criminal justice system in the court process, then things go awry. I think there's only so much inter-agency agreements and collegiate working relationships can do to assist a victim or survivor to seek justice…I think it falls short when we reach the court system.*

More Negative Assessments

Other participants were more critical, noting they had seen few changes in the extent to which different stakeholders co-operated and/or communicated with one another on FV issues. These participants were mainly from the justice sector. For example, JUST#12 felt this was 'not what it could/should be', while JUST#8 had not 'really seen any real change in the way stakeholders deal with each other'. According to JUST#6,

> there is still some lack of clarity in relation to when and how stakeholders meet to talk about domestic and family violence in the territory. In terms of the FVIP, the DVPC, the implementation of the Family Safety Hub and of the Women's Plan and the safety limits of that are the conversations being had in a number of different places. The FVIP is not a creature of statute, which provides a welcome flexibility. But it also means that we have faced resource challenges in doing our work.

Another participant noted that there was too little interaction with ACT Child and Youth Protection Services (CYPS), especially because their involvement would make it more likely that a protection order would be given by the court:

> *There could be far greater interaction by Child and Youth Protection Services.* … [it's] *much easier to get an order with the children on there, when the CYPS says they're concerned…*we lead that evidence into the court, but it just doesn't have the weight it does when there's a CYPS officer down there (JUST#13).

JUST#13 also felt that the police, when supporting women to apply for orders, needed to work collaboratively with the applicant:

> And the woman then has to do her own representation, and there's nobody there leading the evidence, who knows the story, leading the evidence. So, the Registrar will ask her questions but the Registrar doesn't know that there was an incident yesterday to ask about…Yeah if you're not going to be the applicant, but you're going to support the application, why wouldn't you come along and we do it collaboratively, you know?...we've come across quite a growing number of women who have not got their orders.

Participants from the FV sector were particularly critical of the lack of co-operation and communication between parties:

> I think the greater the collaboration ... I mean ACT is quite small. And we have the capacity to be able to share information, probably a lot more easily than [other jurisdictions] (FVNW#3).

> [I]nformation should be shared and we should stop being so caught up in the words, the information sharing and managing risks and actually act from a place of protecting people and then that's much easier (FVW#1).

> I have a strong understanding that co-operation and communication between stakeholders *… in the ACT is non-existent and, at the very best, separatist and competitive, rather than co-operative….There have been no changes as a result of the new legislation.* In fact, the lack of communication in this area is serious to a level that can only be described as 'dangerous' at best (FVW#2).

FVW#2 described the lack of communication as 'prevalent' and said that she and her staff tried to get information about the criminal justice outcomes of the partners of those staying in their refuge from all relevant agencies to no avail. Furthermore, as many of the residents of refuges are not clients of DVCS, that agency cannot assist, as they do not possess the relevant information. FVW#2 declared that:

> women with an FVO have nobody to contact to ask anything, not even when they learn from personal associates that the perpetrator of violence against them were and/or are to be released from detention. Women have nobody calling them to advise of anything, not even when the perpetrator of violence against them was incarcerated, has returned to Court, and the outcome and terms of this is not relayed to victims. I have witnessed and participated many, many times in completely failed attempts by women to learn of any changes or any information related to what constitutes clear risks to them, including by contacting police, Legal Aid (DV Unit inclusive), the AMC, the Court, DVCS. *There is a complete systemic failure in considering and including victims in their thoughts and practices in relation to communication.*

Because of the inability to communicate with the AFP, one participant mentioned that they had formed a 'family violence committee':

> *because I got really frustrated with the fact that I couldn't find things quickly enough for clients…on a weekend in particular.* Couldn't find the number for the family violence AFP, couldn't get it through AFP, etcetera, etcetera. So, we formed the committee and the real goal for it is this very thing, it's to try and find some sort of centralised database, that's obviously for anybody to access (JUST#11).

Information Sharing and Managing Risk Where There are No Criminal Charges

Professional stakeholders were explicitly asked for their views on sharing information in circumstances where no criminal charges have been laid (see Question 17 in Appendix A). They generally agreed that there is currently a deficit in relation to information sharing between agencies and that more information sharing would be beneficial in the FV sphere (see Chapter 7 for numerous suggestions offered by participants for improvement in this regard). One participant felt the ACT was behind other jurisdictions in this area:

> most other jurisdictions have developed something, kind of leapfrogged us a little bit, where they have some kind of either co-located function that, for example, at a minimum brings together... they're different in different states, but police, child protection, DV, crisis agency [working together] to effectively assess and triage cases as they're identified… *For that to be possible, in the ACT, I think we need to get to a better place in terms of having data where we can look at risk in real-time because case tracking,* [but] we're coming together once a week to look at data that's a week old (Directorate#4).

Another prevailing view was reflected in JUST#8's comment that 'personally I'm not averse to any information sharing, provided it's contained within the appropriate places.' This view was shared by others:

> *this is something really should be improved and I think it should be something where's there's significant work done,* because the reality is there are lots of family violence related behaviours that are not going to result in a criminal conviction and the number of men that we work with in the program where they are coming in voluntarily and they've not got any significant history of criminal behaviour and they don't have any of the other criminogenic factors either and so they are considered quite stable…but then he hasn't really come to the attention of police in the same way…how do we actually track these men through the system? (FVNW#2).

> *I'm not seeing a good degree of information sharing between the organisations where women with disabilities are likely to turn up and where there is disclosure.* And I'm not seeing anything through the Family Safety Hub that would initiate that better coverage of women with disabilities, disclosing or presenting which lodging to escape from domestic and family violence situation. So, yes, *I think that there could be a great deal of improvement done, and that this would have to be done through government* (INTER#2).

> *[P]rivacy rules are there to stop people losing control of things and things being breached. They were never intended to be inserted as a way to stop two agencies from working collaboratively to achieve something positive.* So,

> maybe there should be an imperative to get around privacy laws, particularly where it's for a therapeutic benefit (JUST#15).

A Directorate stakeholder agreed, but reiterated that care must be taken in this area, as there is the possibility of increasing a person's risk to violence through information sharing:

> And if it's in interest of child safety, then more information sharing [rather] than less is good. *When it comes to sharing information about adults, that needs to be with their full consent and understanding what the implications of that are, I think* (Directorate#3).

Directorate#5 also felt that

> our links in terms of understanding data is good, although it's primarily managed in through a single pipe, if you like…. So I think, whilst there is some information and data sharing and we've got a good relationship, when we ask questions, what there's not is that I think probably a universal way of us working together when there are worries and concerns.

FVNW#2 highlighted the challenges in this context:

> How do we make their behaviours visible? I think there does need to be a better conversation around what that actually looks like, because they often tend to be the men where there's really high levels of coercive control and their behaviours are not well known.

Several participants referred to the frameworks in other Australian jurisdictions, such as the Gold Coast Integrated Family Violence Response[54] and the Victorian[55] approach, as examples of what could be done in the ACT. FVNW#1, commended the Victorian model, where 'you are able to disclose without consent to another registered information sharing entity'. Some participants also mentioned that the health system is often the first contact point for people who have or are experiencing FV, so 'more needs to be done from that point of the system' (Directorate#3). As noted above, however, several participants saw applicants' consent as a paramount consideration.

After-Hours Orders

The provisions relating to after-hours orders (AHFVOs) are contained in Part 7 of the Act. Only one participant indicated that the operation of these orders was 'fine' (JUST#6). However, even this participant had some concerns:

> It concerns me that the magistrates, they're on call overnight and then sitting the next morning. ... *That police concern in relation to disrupting a magistrate from their sleep, knowing they're going to be sitting the next morning, may mean that they're not making applications when they may otherwise do so. So, it's a disincentive for police to make such applications.*

[54] See e.g. Donna Justo, 'The Gold Coast Domestic Violence Integrated Response to Perpetrators of Domestic Violence: Political Activism in Practice' in Andrew Day et al, *Domestic Violence – Working With Men: Research, Practice Experiene and Integrated Response* (Federation Press, 2009); ALRC and NSWLRC, *Family Violence – A National Legal Response Final Report Family Violence* (Report 114, 2010) 1355.
[55] ALRC and NSWLRC, ibid, 1358-1359.

JUST#17 asserted that although 'some of my colleagues think police aren't stepping up quick enough…I think there's an appropriate nuance here, that sometimes an arrest is a step too far and you just need to keep people safe'. Like JUST#6, JUST#17 highlighted concerns with magistrates being woken up overnight, sometimes more than once, and then having to sit in court the following day, describing it as 'a personal consequence. It's something the government doesn't see and the community wouldn't either'.

The 11 other participants who responded to this question felt that the orders were not sufficient and changes were required to ensure they were an effective means of protecting victims of FV. The following section highlights the key concerns expressed.

Higher Burden of Proof and Inflexibility

JUST#1 commented that the AHFVO scheme, which aimed to improve access to magistrate-issued orders, raised the threshold of proof from 'the statutory test to obtain an order from "may cause injury or damage", under the 2008 Act, to "immediately necessary to ensure the safety of [a person]… or prevent substantial damage to [the person's] property"'. This increase in the test was perceived to be coupled by other factors concerning inflexibility, which '*act to offer less protection* [than] under the 2008 ACT'. These factors include:

> 1. AHFVOs may only be issued outside of court sitting hours;
> 2. FVO applications must be made by 11:00am to be heard on the same day;
> 3. if an urgent application for an FVO is made between 11:00am and 5:00pm additional levels of scrutiny and justifications are required. If the out-of-session hearing is not granted, the FVO application will not occur until the following business day;
> 4. as an AHFVO cannot be sought by police until after court closes at 5:00pm, there is a six-hour window (between 11:00am and 5:00pm) where neither an Interim FVO nor an AHFVO can be issued; and
> 5. the AHFVO application process is time-consuming and may result in a respondent being detained for longer than may be necessary.

Therefore, JUST#1 believed the current framework for AHFVOs was inadequate:

> *[it] does not provide a suitable or easy method of conversion to an Interim FVO.* The current order framework requires an applicant to attend court and complete an FVO application, irrespective of the prior granting of an AHFVO…[which] *places an unreasonable obligation on a victim.*

Perception of Lack of Use by Police

Given these restrictions, it is not surprising that some participants felt that the power to issue after-hours orders was not often utilised by police:

> I've never heard of them being utilised, myself. *Clients have wanted to have an after-hours order, and not been able to.* …People, say, just go to court on Monday and apply for the order…I don't know of any client who's had an after-hours order (JUST#3).

> *[M]y anecdotal evidence from the people I know in the sector is that it doesn't get utilised. So, it's there but it's not being utilised.* And that's because I don't think we've had that attitudinal shift that says to the police, this is about you

> and the perpetrator. It's not about you and the victim or him and the victim (Directorate#2).

> This could be due to a belief by the police that *there is a higher threshold, because you're waking up a magistrate in the middle of the night to ask for an order…* potentially old school views on why you're applying for an out-of-hours order that can't wait until 9:00 AM tomorrow morning (FVW#6).

Conversely, another participant observed they had seen police exercise these powers quite often, but there was a lack of consistency in police use of powers, with these orders used 'with child sexual assault, within a context of family violence':

> it does seem to be hit and miss. So, some of those after-hours orders, whilst they're been agreed upon and put in place, they're phoning days later and sort of saying 'what's happened with that?' 'Oh, we can't find the person' (FVW#1).

The idea that the orders were used 'in lieu of charges' was the view of FVW#6 and also raised by JUST#12, who was concerned that 'police can rely on these orders in circumstances where they are uncertain (or potentially uninterested in) about prosecution'. JUST#17 also suggested that:

> the larger school of thought here is that police are not taking action when they should often enough and they are instead taking this second order step of seeking an after-hours family violence order.

In another interview, where two individuals were interviewed together, one participant noted that the after-hours orders 'seemed to work' but 'there's not a lot of them, we don't come across a lot of them' (JUST#13). Their colleague commented on issues with service of these orders: 'the problem is probably that they can't, they've got to make sure that the respondent knows about them and sometimes that's just not possible'.

<u>Lack of Protection</u>

Other issues raised with these orders included that they offer no greater protection to women and/or children affected by FV:

> I think not, particularly due to home ownership or tenancy rights. *By simply issuing an order, women and children will most likely continue to have to leave their homes* (FVW#2).

> I think if it's after-hours, there needs to be a stronger prevention, and I know I said before that jail isn't the answer, but if somebody has to take something out after-hours, that's scary….*To me, it's at that point that that person needs to be jailed, or kept away overnight* (JUST#4).

<u>Confusion Concerning Expiry</u>

Two participants referred to issues with confusion regarding when an after-hours order taken out by a police officer under section 99 would expire:

> We've had quite a few examples where, just at a basic level, it hasn't worked. So, the [orders] are granted. They're granted for two days, but…applied for on

> a bank holiday *and no one could actually work out when the order ran out, not even the courts* (FVW#3).

> This is something that I raised towards the end of last year at an inter-agency meeting, which was, given that police, across Christmas, New Year, are the ones that apply when the courts are closed, I said, 'Well, how does that work? Because, if it's two business days, how does that work with all your holidays?' And no one could answer that for me…And we never got an answer about it, but I feel like a real way to deal with that would be to put an expiry date on it, just a date, rather than saying just two business days… from when the court is open, *because across that period is when stuff occurs and people need to know when their order expires* (FVW#6).

Lack of Support for Perpetrators

For another participant, while the orders were an 'effective mechanism', the issue lay with the lack of support for perpetrators:

> So, I think kind of, it's an effective mechanism, but I think we need to see the flow and effect of services in the after-hours space to make it really effective as well. So, we're seeing it with women to a degree, with women's services and accommodations like emergency accommodation services... I think there's still room for growth there. But we haven't really seen after-hours perpetrator services, apart from phone lines (JUST#2).

Extending Final Orders on Interim Basis

Some participants approved of the current process of allowing final orders to be extended on an interim basis, pending the application for an extension of the order. For example, FVW#4 felt their practice did not have 'any potential issues with doing that'. FVW#2 supported the practice of allowing an extension on an interim basis was fine, but felt that the extension period should be for only a short time. For INTER#2:

> on the general question of extension of family violence orders, I think that, given the time taken to sort out an alternative living arrangement for women with disabilities, which is likely to be an extended timeframe, then *I think that that would be essential, [so] that we have a seamless way of being able to cover an interim period before a formal extension of a family violence order*, and I think that that would be very beneficial for the people who are working with the woman and supporting her, that it's like a fail-safe action to put in place.

Another participant also saw no issue with the provisions, but was not aware of them being used in practice:

> I think it's fine, because I think they're at risk at the moment that an order expires.... *Anything that covers her safety until something more permanent can happen or whatever needs to happen next, I would support its use*. … But I would be interested to see what is the data, how often is that being used? (Directorate#2).

Should the Power to Extend Lie with a Registrar or Magistrate?

When asked whether this decision should be made by a registrar, rather than a magistrate, some saw value in the application taking place in a less official environment (INTER#2). Registrars were seen as appropriate to make the decision, since they were empowered to make other decisions with respect to FVOs:

> So, when you consider that registrars currently make interim orders, in my view, there is no substantial risk of allowing registrars to extend final orders on an interim basis to the liberty of the respondent. *The extension of that order would, I presume, be subject to the same review processes as other types of interim orders, which would mean that the respondent could attend the court on the same day that they were served and seek amendment or change.* But what it does allow for is those situations where, at the 11th hour... an applicant realises that their order is about to expire and their safety concerns persist, allowing them to appear before the court and for the matter to be dealt with expeditiously. So, again, there has to be sufficient evidence... [It] *would have to be put to satisfy the registrar, that there was an ongoing safety concern* (JUST#6).

However, other participants felt the decision whether to extend the order, even on an interim basis, should be made by a magistrate, rather than a registrar:

> I think the answer is that it needs to be judicially determined. That there's a further need for the order. …Because we're now looking at a person having an order for a long time. *I mean, the final orders are determined by a judicial officer if they're not consented to, in all circumstances. So, an extension really should be dealt with in the same way* (JUST#3).

One participant, who agreed the decision should be made by a magistrate, explained that the respondent should have a voice in the process or this could lead increase the risk to the applicant:

> Well then, I think, go to the court system, let the judge/magistrate make a decision whether it goes to another 12 …. That covers everybody. If there is safety issues, it's going to come out in the court, it's going to come out in the process. If there's not, the magistrate's going to question why you've applied for another 12 months….So I just don't go and say, 'I want another 12 months'. And he goes, 'Yep, sure'. Because that's what happens now, isn't it? They don't even have to justify why they're doing it….*So again, if we're looking at the safety of women and children, sometimes they can be, if the man doesn't have a voice in the process, then that can actually increase the risk to the woman and children. Because he can now go, 'Well, this is bullshit. I haven't done any wrong. I have been compliant. Why is she taking another 12 months?'* (FVNW#3).

Another participant agreed that the decision should perhaps be decided by a magistrate, but that the process needed to occur much faster:

> So, at the moment, we're finding that interims are being granted and then the return conferences are like four to six weeks later. *I think when we look at final orders, it should be, someone applies for the extension and it should be within court within seven days*, easily. Done. Dusted. Here's the evidence. Maybe go

> straight to just heard by the magistrate, and if the magistrate's satisfied at that time, they grant it. *We're very aware of the respondent's human rights* (FVW#3).

JUST#3 observed that there were both 'pros and cons' with the shift of power to registrars, which does allow for speedier decision-making.

Fairness to Respondent

JUST#8 pointed out that 'the onus is on the respondent when you're seeking an extension', adding:

> Of course, I think, given the lack of resources and the fact that it's not likely to be reached on the first occasion, you have to have a power like that, *but it really should be only extended if the Registrar or Deputy registrar's satisfied that it's necessary*.

Another also noted the need to ensure there was an element of procedural fairness with respect to the respondent:

> There has to be some finalisation, though, you just can't have a perpetual interim order. Someone, somewhere, has to have procedural fairness to have to actually complete the order, but a rule that you shouldn't extend an interim order, I think, is a dangerous rule (JUST#15).

These last two comments by justice stakeholders refer to the respondent's rights. Two other participants from the justice sector shared their views on this, JUST#4 saying 'I don't think that's fair' to the respondent. JUST#11 explained that, although they benefited from the provision, because they were often applying for an extension on the applicant's behalf, they recognised some inherent unfairness in this process to the respondent:

> Because the magistrate must extend it for a stated period, which is 12 months or more usually, and the argument that wins that every time, when the defendant comes in and says, 'But I haven't done anything for two years'. Is that because there was an order? And it gets extended. …*It is very unfair to people who have been pacing out a final order and want it off their backs and it's as simple as going in and getting it*…But it's wrong.…I'm honestly telling you that I really personally like it, but it's wrong.

The Overall Impact of the Act

Has Culture Change Taken Place?

Positive Perspectives

Some participants felt there had been positive cultural changes in the FV sphere in recent years, although they were mixed in their views about whether these were due to the new legislative scheme or to other shifts. These participants came from a variety of sectors, but, importantly, were often those working directly with the system and were in a position to observe responses to FV under the new legislation.

Several participants identified the new Act as providing the impetus for the positive cultural changes. JUST#12 suggested that 'there has been increased awareness of the types of behaviours

that can manifest as family violence and an awareness that the courts will recognise these behaviours as warranting protection and prohibition'. According to Directorate#1:

> I definitely know that this is a much greater tool and a framework to work on now. Looking at the *2016 Act is definitely giving the families a better framework in which they can actually operate and work together* …You can write anything [in] new legislation. You can have a community that thinks strongly about this. But, having made that cultural shift in the way people are thinking, we've just come to a point where people can talk about violence…we're getting to that space that people are beginning to empower themselves.

Others believed that the cultural changes largely predated the new legislation or could not be attributed just to the Act:

> I think it's fair to say we've observed changing cultural understanding around family violence over the past decade maybe…legislation can only go so far in changing attitudes, culture, anything really, other than the law – and even then, it's open to interpretation and some aspects don't even get considered sometimes…[I'm] not sure how many people even know the preamble exists or refer to it in any capacity whatsoever when interpreting the Act (JUST#14).

> I think, over the last 5 to 10 years, there has been some attitudinal change around looking at domestic and family violence, and trauma, in more of a therapeutic way. Certainly, a response to perpetrators that is more therapeutic…and obviously domestic and family violence has become much more [visible] in the media, over the past five years in particular (Directorate#3).

> Not necessarily as a consequence of the changes made, but in addition to it and to a perceived increase of public debate about domestic/family violence, I think that the community has become a bit more aware of the problem, the extent of the problem, the inclusive nature of the problem, and the seriousness of responses to perpetrators (FVW#2).

> [A]t the same time that was changed, there was a lot of family violence conversation in the media. So that's probably the biggest change of culture which is happening, and it became very fashionable to take a certain view about family violence. That's where the biggest change was. I think the Act occurred in the shadows of that (JUST#17).

> *[T]here is gradual cultural change, and I don't think that you would put it down to any influence of the Act itself.* If you think about the changes which have come about through the action plans under the National Plan to Reduce Violence Against Women and their Children and then the lobbying for and the start of the Royal Commission into neglect of violence, exploitation, neglect, and abuse…that has put focus on it (INTER#2).

> *[T]here's a much better understanding about the broad nature of family violence and that it can include things like suicide threats designed to intimidate…*So there probably is more of that. So, you get respondents saying to magistrates, 'There's been no family violence' and then the magistrate

> [say]s, 'We need to have a look at the Act and see what family violence means' (JUST#8).

> I do think that there is greater awareness – whether or not that's due to the legislation or the broader conversation that was happening at that time – [and more] who identify that they're experiencing family violence and it not just being purely about physical violence (JUST#13).

> The good thing is that it's a conversation people are having now. It's not something people are shy about or not talking about. It's not something you need to be ashamed about…We're taking it into the schools. We're getting young kids to recognise how you treat people. It's the whole thing (Directorate#1).

Some stakeholders who felt that there had been some positive changes also expressed the view that further change was still required:

> I would say that certainly I think the conversation around what we're actually talking about when we're saying domestic [or] family violence, I think that's changing... I think there's probably still some work to do in terms of identifying the predominant aggressor and … *rather than looking at family violence from an incident-based sort of violence back to looking at it as a patterned form of violence* (FVNW#2).

> We have more good news stories, *but I just want to stress that we still have moments where you're like, 'Oh well, just as you think we're going forward'.* (FVW#4).

Some participants noted that they had observed positive changes in the courts:

> I would say that there definitely has been a culture change within the courts and the magistrates and registrars, specifically with the new expansion in definition. Particularly, I think, with the magistrates and understanding the complexities of family violence…*So that, I think, is really good, particularly some magistrates that have been there for a really long time that obviously worked extensively with the old legislation*. I would say that maybe less ... with deputy registrars, because maybe they're more cautious in granting orders (FVW#6).

> Registrars … and magistrates hearing applications now apply a different contextual lens to how matters are applied for. And certainly anecdotally, those services providing assistance to applicants, say Legal Aid, are very aware of the broader definition. And there are now applications that you would see made under the current legislation that may not have been … made under the previous legislation. So, applications made on the basis of economic abuse is a really good example (JUST#10).

<u>Less Positive Views</u>

Many participants were not as positive in their assessment of whether there had been cultural changes brought about by the Act. Directorate#4 felt that, while there had been some good engagement between those at a senior level in terms of prioritising FV issues, the cultural shift had otherwise been 'patchy' and that system-wide changes were still needed:

> So, for example, I only hear positive things from people that have engaged with the Family Violence Unit, you know, ACT Policing. *But, you still get a lot of stories about really inconsistent practice from police in terms of their response to victims of domestic and family violence, in terms of... frontline police, seeing it as serious as they need to...* going through the right process, to for example identify non-fatal strangulation. So, you've got a core of expertise there, but still that kind of standard you want to see isn't happening across the whole system.

Another participant described negative changes in terms of how FV was viewed. In particular, they noted that, while there was a tendency under the 2008 Act to view FV more holistically, under the new Act, there was a focus on FV as more singular 'events':

> suddenly it was events and it used to be a pattern of behaviour. And I think that's a real loss to how we see violence. …we were responding, with changes to this legislation… built upon horrible things [that] had happened in the community, a knee-jerk reaction [and] made it a whole lot more risk-averse, because who wants to see anyone get harmed? No one. *And I think then it became… we were responding to events, not looking at broader issues* (FVW#1).

FVW#3 noted the existence of 'fatigue' in the system, with registrars seeing 'maybe 15 interims a day, for example', which could work against culture change. This participant went on to explain that culture change would also be limited by a lack of adequate training on FV issues. Two other participants also raised this issue:

> I think, when the Act came out, there seemed to have been some extensive registrar training… *you can almost pick the registrars who went to the family violence training and the ones who didn't.* And I think that's absolutely essential (JUST#13).

> *They've done training two years ago. I think it needs to be ongoing, and probably in regards to the intersections with Aboriginal and Torres Strait Islander people, as well as [culturally and linguistically diverse] clients and people affected by disability as well. There's different stories there and different learnings….I think it's important, if you want to change culture, you can't really do that without understanding* (JUST#6).

Other participants stated that they had not observed any positive cultural changes in the court system with respect to FV matters since the implementation of the new Act, with JUST#9 not noticing 'any particular big change in culture', while JUST#13 felt that:

> the cultural change within the court system has happened, but quite begrudgingly. And I guess that's for a variety of different reasons. I think that it took us quite a while to get some registrars to accept what we thought was the plain language of the legislation about an interim order no longer being only needed for physical violence. You might need an interim order in an urgent situation because someone's been actively threatening self-harm, or they have been, you know, calling you 200 times in ten minutes. *For …other forms of family violence that aren't a physical threat of violence, or physical violence itself, it took us a while to get some registrars on board, that the legislation*

> *had changed.* In terms of …whether you should run a final hearing, when there's been no element of physical violence but other forms of family violence, I think we do still butt up against the attitude that we do see in some magistrates, which has been plainly said on the bench, that 'oh, there's no physical violence, why aren't undertakings appropriate?' Or a concern that we have, knowing the magistrate that we might get, that there would be a dismissal of the patterns of behaviour, despite the legislation being very specific about patterns of behaviour of family violence needing to be considered. And whether or not that pattern needs to be addressed by the order, *there's still often I think, a bit of internal eye-rolling that we sense from the bench.*

For JUST#17,

> I'm not sure if our processes here really changed between the two [Acts]. We still have the same big picture approach. We still apply essentially the same resources. Of course the forms change, the language changed. Some of the tests have been nuanced... I don't think subtle changes of wording here and there really makes all that much difference.

FVW#3 identified issues with staff transiency and a lack of training:

> What we've had now, a little while in, [is] staff turnover. There is no ongoing education for these people. We've got new registrars at the moment who are not educated in family violence. So, you have a *Family Violence Act* that is specific to the knowledge around family violence, and we are aware that there is no training. That, for me, is a major, major concern.

According to JUST#11:

> *I haven't seen anything change in attitude, in how it's managed, in the attitude to family violence. …*There's an expectation, I think, still that has not moved, that we have to be really, really careful not to be conned by people making stuff up, which is quite legit when someone is making stuff up. I absolutely agree with that.

Another observed that there seemed to be an increase, not decrease, in FV cases since the Act was introduced, but not in the areas involving the expanded definition of FV:

> *We're just dealing with standard types of breaches that were the same under the old Act.* So, those types of different issues, I haven't really seen much of that (JUST#5).

> *Only indirectly. So, well indirectly, there's the question of to what extent the extended definitions of family violence have taken root in terms of decision-making. So it's only indirectly. There's a suggestion that they haven't had much impact on the* ex parte *orders, which one might expect, because the* ex parte *order is to deal with an emergency situation.* So, we might deal with direct violence, more than coercion and control. There will be cases where coercion and control is in the nature that it should call for what's effectively an emergency order, but they don't often speak as loudly as direct violence. Whereas the coercion and control … plays more of a role in the final hearings (JUST#16).

Are Victims Better Protected?

We were also keen to determine participants' views on whether the Act had resulted in better protection of FV victims. JUST#17 felt:

> there's [been] a couple of subtle shifts. For example, the presumption in extending an order, the ability to make longer orders in appropriate cases. Those things are helpful. Everything has a negative side as well. There's always yin and yang, and one of the downsides is that some people assume they'll have the protection of these orders forever, when they only need it for a relatively short period of time. So you've got to adjust those expectations.

Positive Perspectives

Some participants felt that the Act provides greater protection for victims, at least to some extent. FVNW#3 recognised that the term 'protection' should be interpreted broadly, however, as the legislative provisions are reactive and could not protect the victim in that sense:

> Well, when we say protected, [that's] after the fact. I mean, obviously, that's what we're talking about here, isn't it? Because, if they're a victim, it's after the fact. Yes, they've got a greater extent to take out that FVO…. for perpetrators, perhaps they're held more accountable. So, perhaps then the victims are safer, because there's a bit more accountability.

Another family violence worker (FVW#6) offered a similar view, noting that, while there were elements of greater protection, including lowering the threshold to receive an interim order, there were limits on how much protection could realistically be offered to those at risk of FV:

> So, you don't have to prove there's a risk of physical violence, you just have to prove there's a risk of family violence…but then also, if frontline officers are still not using that and running with it, *there's not a huge level of added safety, if someone's getting psychological abuse every day or there's coercion and control*.

JUST#13 saw positive changes coming from the interim orders and the ability to receive this type of order for non-physical violence:

> We have to just say, 'well, you know, … we've got a call log here of her being called 50 times in half an hour. That's sufficient to get an interim order. That's clearly harassing. And that's… *almost now universally accepted on the bench of the registrars who do the interim order hearings,* that that is something you can get an interim order to stop.

According to JUST#15:

> *I think the reality is, words on a piece of paper are not going to keep someone safe from domestic violence. I think what's changed has not been as a result of the 2016 Act.* What's changed is…*increasing numbers of neighbours calling police rather than victims calling police, slightly smarter evidence-gathering processes…*Where recanting victims are an inherent part of family violence, *police are getting smarter at using things like the [evidence-in-chief] stuff obviously, but also photos,* and we're more heavily reliant now on A3 patient sheets for ambulance triage, that sort of longitudinal analysis.

Less Positive Views

Other participants were more critical of the system. JUST#5 contrasted the ACT position unfavourably with NSW and found it 'curious in the ACT that they don't, as [a] matter of course, take out a[n] AVO whenever there's any type of family violence incident'. Others queried whether it is possible for the Act (or, arguably, any piece of legislation) to protect FV victims:

> *Look, having the protection for them is a great step, but … we know that orders did not stop perpetrators from going and killing their partners or harming [them]* (Directorate#1).

> Just because of a change in the Act? *Maybe women and children are a little tiny bit safer when granted an FVO now, possibly because of a perception that police and the legal system have become less lenient with perpetrators.* Have they, truly? It appears so, but we are interested in learning if time spent in custody (if any) and number of sentences have increased or not from May 2017 (FVW#2).

> *Orders under the Act alone are not enough. They are also very black and white.* People often don't live their lives in black and white. This is one of the difficulties of the law trying to effect social change (JUST#12).

One participant wondered whether victims may actually be at increased risk of violence now, with FV becoming a more public and triggering issue:

> I mean, I have no stats to support that so, this is personal wondering. But that's supported by services on the frontline of particularly phone services, who have said when an ad campaign is being run… *as soon as he sees that he just goes [violent]*. So, it's a bit of a wicked problem, isn't it? Because if we don't talk about it, then how do we ever do anything about it? But if we do talk about it, certainly that seems to escalate risk for a lot of women (Directorate#3).

FVW#4 also commented:

> I think there's a perception from some people that they are better protected, *but the reality of what we see is telling us that they are not protected.* I guess when I think about the people we support and encourage to use the *Family Violence Act* and the domestic [sic] violence protection orders puts them, I still genuinely believe, as do my staff who are working with them, that at that point they make that decision, they are still extremely vulnerable, at high risk. *They're still not offered the protection you would think at that point.*

Directorate#4 raised the lack of understanding that remains about the behaviours covered by FV and recognised that FVOs are limited in some ways in their ability to offer protection, noting that applicants do not always receive sound advice and assistance:

> *I hear… stories occasionally about people who have found... particularly with police, probably, the intention of the Family Violence Act to provide protection for a broader range of behaviours isn't necessarily as well understood as we want it to be. So that kind of is a barrier to people being protected…*And you've got to have good advice about what's actually going to protect you. One of the pieces of work that the Family Violence Intervention Program has been

> doing is actually collecting data about people coming for family violence matters at the court, … what agencies are supporting them, are they getting the support. Now, it's not super robust data, but it's really pretty interesting, because…last year, it said something like 40% of the people coming for a family violence order were not assisted by any agency on the day…*So if they're not getting good advice at the front-end of that process, then they're maybe not getting the best protection that they could.*

This stakeholder had other concerns about the lack of trust in the system that can ensue as a result of the court process:

> And I have certainly heard from some people that what they see in the courts is the victims in that situation, they have had to, through that 12 months, deal with all the issues for that family, which might involve, if there's a family violence order that says they … can't live together, then there's potentially a huge financial impact and a whole range of things that she's had to kind of work through and then you get in front of the court and actually nothing actually happens. *So those women can end up really disaffected, be effectively hostile witnesses in the court, and it's hard to see what we've achieved, like we certainly haven't really protected anyone. And in fact, they've probably had such a bad experience that they're not going to call the police again. So, I think there's a real risk that we don't deliver protection and that we actually undermine people's confidence and trust and I don't know what can be done about that*.

FVW#1 felt that the legislative changes were necessary, but that, without additional resources to support the Act, more individuals would come through the system needing support, but might have to wait longer for that support:

> the service system isn't expanded at the right rate to then be able to capture the fallout of changes in legislation and is not, when you sit in services like this, it's almost impossible sometimes to have these discussions because the rape crisis centre and DVCS will always need more because more people report. When we make these changes in legislation, not recognising the flow-on effect to the rest of the service system, *…[it] means that people are waiting longer because more people are coming.*

Three other participants also raised the issue of inadequate resourcing:

> I have concerns about the resourcing of enforcing, serving and dealing with family violence incidences. That really concerns me… *I guess my concern is, in terms of the police force, that there's a lack of resources to follow up family violence breaches…and they're not prioritised.* That's the experience I've had (JUST#3).

> The Act aims to make people safer by allowing them to apply for an order. *In fact, in some circumstances, applying for an order will escalate the safety risk. If we don't have appropriately resourced, accessible expert services on the frontline to assist people to reflect on and make the best decisions for their safety, then the Act may not increase their safety* (JUST#6).

> There's a different resource challenge and we have a large number of these

> matters coming through the court, and it's only one jurisdiction of many, which we need to juggle our resources across (JUST#17).

Others had not observed significant shifts since the introduction of the Act. For instance, FVNW#2 believed that, while the Act potentially provided greater protections through the broader definition of FV, there was a lack of mechanisms for accountability for perpetrators:

> *I would say that I probably haven't seen significant change, or seen that it's made a big shift.* I think in terms of the families that we work with, where we run into trouble or where we see it not work, it's not necessarily in the Act itself, it's in how it's been managed in the community, so more coming at the other end around, like when police will actually breach the order…but our experience with working with the men is that how that's then handled in the community is probably not increasing safety. *We've worked with a number of men where we've really had to advocate strongly for the number of times they've breached the orders, and they're not getting the accountability measure that they really need from the police.*

Some Groups Not Protected

Participants identified several groups that are particularly likely not to be adequately protected: gender-diverse people, people with disabilities, culturally and linguistically diverse people and children. JUST#7 suggested that:

> [t]he Act be revised to ensure there is mandatory referral to the Public Advocate of all matters where an applicant or respondent has impaired decision-making ability and is not represented, or where it is not clear whether they are represented…[and] where children or young people under 18 years old are either the applicant or respondent and who are not represented, or where it is not clear whether they are represented.

In addition, JUST#7 called for all parties to be 'provided with an opportunity to identify if they have a disability or impaired decision-making ability should they wish to do so'.

The two intersectional workers stated that some groups may have benefited from additional protections, but other more marginalised groups had not:

> I think there's massive cultural issues and barriers and I also think that the mainstream family violence sector... hasn't been set up, or is not really equipped to understand and I guess, make efforts to prevent or respond to [FV against gender-diverse people]...There's particular nuances (INTER#1).

> [T]he protections are much greater now than they were previously. But we still…have *that it's the perceived barriers to leaving a situation of violence which then restrict women with disabilities from entering the domestic and family violence system at all* (INTER#2).

For Directorate#4, even when culturally-specific processes are available, such as having interpreters, the courts may still be resistant to using them:

> in 2016, when with all the changes that flowed through the *Family Violence Act*, there was additional resources for translation [and] interpreting services. And it was pretty easy and there was a bit of a legacy history about what the

> Commonwealth funded, what the ACT Government funded. So, this money was to fill the gap…It's primarily phone-based interpreting, which there are challenges with that in the courts, but there's a lot of people that are positive about the anonymity of interpreting that way. But there's been this uphill battle to get the courts to actually use interpreters as broadly as the Government intends that they should. So, there's an assumption that there seems to be, the stories that I hear, is if someone speaks in English at all, the assumption is they don't need an interpreter, but in fact they probably do... they're able to communicate something with you, [but] that doesn't mean they're understanding everything else that's going on.

JUST#11 felt that 'there's more reluctance to put children on orders than there once was'. FVW#5 was likewise concerned that children remained unprotected under the legislation and, further, some victims were being pressured to accept an undertaking, rather than an order, an approach which, in their view, did not offer protection:

> It doesn't allow for children to be protected. *They're not generally part of any order, which makes it really difficult for women navigating with perpetrators who are the father of those children.* And then you've got the *Family Law Act* which is in contradiction to the *Family Violence Act*. And so, you might have an order in place but the family law legislation overrides that and certainly that places children at risk, as well as women, regardless of whether they've got a protection order in place or not…And then the one thing that we've noticed over the last little while is that *women are also being encouraged, and pressure being put on them, to do undertakings instead of orders.* What we've discovered is that... women with complex issues, like immigration matters, because of the complexities around that, they're being encouraged to do an undertaking with the perpetrator, rather than take an order out. I think that's coming from police, but … from solicitors as well. I don't know where that fits in the legislation but it's certainly worth mentioning.

Summary

To summarise briefly, this chapter has shown a rich and diverse range of opinions concerning the Act and its operation. The reasons differed along work sector lines to some extent, but there were some issues that almost all who responded saw as inadequate: information sharing, inter-agency co-operation and after-hours orders. In regard to the effects of the Act, most of the participants did not see a direct link between the Act and culture change either outside or within the courts. Most participants also did not feel that the current Act protected FV victims better than the 2008 Act. For both these issues, however, this was not necessarily seen as a failing of the specific legislation, but rather beyond the scope of legislation generally.

5. Findings – Professional Stakeholders' Perspectives on Possible Reforms

We now report on professional stakeholders' responses to specific questions about changing the FV legislative landscape.

Changing the Definition of FV

Support for Reform

Most of the participants, across all sectors, agreed that amendments to the legislative definition of FV were needed. We consider these participants' responses to specific questions concerning technological abuse, coercive control and cultural abuse, but participants also had suggestions beyond these categories for other types of FV that could be included in the definition. According to INTER#1, 'labelling *family violence of a homophobic or transphobic nature would be really, really useful* (INTER#1)'. In addition, INTER#1 called for inclusivity in how the legislation is framed:

> it would go back to my comments around making sure that the framing of the legislation is as inclusive as it can be, and that everyone is on the same page in terms of the way that family violence is captured within the law…then I think any kind of initiatives that come out of these reforms, at a community level as well, that they're really making efforts to include family violence, that it impacts trans, gender-diverse people and intersex people as well.

JUST#4 suggested including elder abuse, while others called for recognition of the impact of FV on children and more extensive inclusion of sexual violence:

> What I'm suggesting is that …they actually *look at the family law definition of family violence, because it has a wider definition of violence against children,* which I think is really powerful (JUST#3).

> I think we need to recognise that … it's been a failing to not to include sexual violence, in all of its many types, in the very definitions, that name sexual assault (FVW#1).

<u>Technological Abuse</u>

A number of participants spoke specifically about technology-facilitated abuse, which they had perceived or observed was becoming 'an increasing issue in people's lives' (Directorate#3). According to FVW#4,

> particularly in the issues of someone putting their name out there and having strange men arrive at your house because somebody's put up a profile of you. *That is all, yeah, it's broadening that definition of technology facilitated abuse.*

JUST#7 recommended the inclusion of this type of FV in the definition, with legislative reference to specific examples 'including non-consensual sharing of intimate images, tracking or electronic surveillance; and intimidation or harassment through social media or use of other technology'. A number of other justice participants also saw the need for reform in this context:

> We do think that technological abuse should be included, and we're not just talking about sharing of images, *we're talking about using all forms of social*

> *media to humiliate and demean and denigrate people and to isolate their friends from them* (JUST#13).
>
> [T]here's probably some room in relation to social media… The Act should already have that somehow….I haven't really thought this through, but it should anticipate that there could be potentially violence or threats of violence through social media…I think there's some room to really think about social media and how that could be better incorporated within the Act, in the simplest way possible (JUST#17).
>
> I was surprised when the 2016 ACT came in that that wasn't explicitly referenced, because we were advocating at the time for it to be, but it wasn't (JUST#6).

JUST#6 suggested that, in order to ensure that there is no ambiguity for the respondent in what constitutes abuse, 'reference to technological abuse is also specifically included in the list of standard FVO orders'. JUST#7 (an organisation) stated that the 'no contact' provision should include specific reference to prohibiting contact via social media and other technological means,

> similar to the 'no contact' provision in NSW orders, which provides examples such as: 'You must not approach or contact [the protected person] in person or *through electronic communication and devices (for example, by phone, text messages, emails, Facebook or other social media, or GPS tracking)*'.

JUST#1 commented on the increase in 'technology facilitated offending, including stalking', noting that 'current legislated offence provisions are limited in their ability to address these developing technologies and do not sufficiently encompass all offending behaviours'. Accordingly, JUST#1 called for the drafting 'of a new offence, or the broadening of the *Crimes Act 1900* (ACT), to allow the stalking offence to better respond to technological developments and modern offending methodologies'.

Coercive Control

Some participants spoke of the need to include and more clearly define the concept of 'coercive control', which is 'really significant' (Directorate#3) and 'is part of domestic violence' (FVW#5). As FVW#3 noted, 'it cannot be ignored. *I would love to see coercive control explained* ... Because coercive control is too much open for interpretation'. Similarly, FVW#2 felt that:

> coercive ongoing control, as a pattern of behaviour, *should receive a higher significance and [be] address[ed] in the Act*, as it is so very much prevalent and has such long-term detrimental consequences to women, children and society.

INTER#2 noted that issues of technological abuse (discussed above) and coercive control were issues disproportionately experienced by women with disabilities:

> Coercive control and technology-facilitated abuse is such an intrinsic part of the lives of women with disabilities that I do think it's an oversight that we haven't really incorporated that into the Act [and] emotional control as well. And we look at the wide spectrum of ways in which power and control is exerted over women with disabilities. I think they're essential. We are finding from bits of research that are done that technology-facilitated abuse is at a higher rate with women with disabilities than it is for non-disabled women.

Cultural Abuse

Participants also recognised the importance of accounting for *cultural abuse* in the definition of FV. They recounted examples of this type of abuse that they or their organisation had dealt with:

> the cultural abuse has particularly been around men who are usually, not always, but potentially, from a white Australian background, and *they may have Aboriginal women as partners and [create] a real isolation and disconnection from culture and community, as a really sort of deliberate act around trying to isolate and undermine their partner*. …We also see it with families who come from other cultures… often the men will bring over family relatives to come and live in the house with them to keep an eye on their wife when they're not home, and to continue to exert that power and control. Often [they] disconnect her from her family back home and stop her from engaging in cultural practices or linking in with local community, that kind of thing as well. *Again, using a really abusive isolating tactic* (FVNW#2).

> In terms of cultural and dowry abuse, I can report that our refuge has witnessed many times the complex intervention of families of origin at an overseas location into marital arrangements for their children in Australia. This includes *pressures by women's families over them not to leave their violent partner*…Fathers and mothers exercising pressures on women to comply with their husband's demands and wishes, … in order to save shame, or to continue to receive financial help, or to comply with dowry terms between the man and woman's families overseas…Australia needs to recognise the reality of what people live through here, all people, as this society is multicultural (FVW#2).

One participant was surprised that dowry abuse was not already included in the ACT's legislation:

> I know in Queensland, dowry abuse is a separate charge so maybe it's something that... but definitely *dowry abuse, for sure. I'm amazed it's not included already* (FVNW#3).

No Reform Required

A minority of participants did not consider it necessary or desirable to change the definition of FV. These participants came from the justice and Directorate sectors. For some, amendments were not necessary, because they believed that the current definition already encompassed behaviours like coercive control:

> they have a range of examples, but not prescriptive issues, that might give you more flexibility to actually respond, than if you start to try and define these things, which I suspect would potentially get quite challenging and could have adverse outcomes (Directorate#4).

Several felt that adding to the definition could lead to inflexibility or narrowing of the scope of what is or is not considered FV:

> I think if we make it specific, then we might risk narrowing the scope to that area and not thinking broadly in relation to power and intimidation in general form (JUST#2).

> So, if you think about dowry abuse, for instance, presumably that would be emotional, psychological abuse or economic abuse. …One of the problems is, the more you specify, the more loopholes there are. In this case that I had, the guy had sent a text message saying, 'I'm going to kill myself'. Sent a photo of his gun. They were at a physical distance, so does that constitute emotional or psychological abuse? …There are arguments for putting specifics in for consciousness-raising and all that kind of stuff, but I think there's a risk also that the more specific you are, the more loopholes there are. So, I think I generally prefer to keep it less specific (JUST#8).

There was also concern expressed that the section could become unworkable if the suggested amendments were made:

> It would be hard to capture. It would be hard to criminalise the husband keeping the car keys in his pocket or holding control of the bank accounts and handing out money on a subjective, as needed basis. *It's really hard to criminalise that stuff. …It's like trying to capture smoke. I mean, you know it's all there, but you can't capture it and harness it.* The only way to deal with that, I think, is perpetrator education and victim education, because they're all the smoky signs of something that's happening but you can't capture the smoke. …Also, psychological stonewalling, gas-lighting, these sort of things are all equally signs, but... it would be a bloody big piece of legislation if you tried to capture all of the psychological hotplate stuff (JUST# 15).

> I think it's probably too broad as it is, and that is because it's about violence. It's about safety. I mean safety and violence in the sense of physical and emotional, psychological type.... It's already being used as a defacto starting point for other disputes, be it children or property, and it's not the right place to do it. Because the threshold's so low, it gives too much power to the person who walks in first (JUST#17).

> [T]he problem [is], with the more you put into the definition, potentially the more awkward the definition becomes, so there's that. *So there's a good argument for having a simple framework in the definition.* How the *Family Law Act* does it, is you've got a simple overarching definition, which effectively revolves around, is it coercive, controlling, or fear-inducing, which I think will cover any behaviour. If it doesn't, then that's a reason to extend that, but then there's a series of inclusive examples or non-exclusive examples, which I think is quite a good model for doing it and those examples are part of the provision itself, rather than examples that are not part of the provision (JUST#16).

For one participant, while it was important to recognise issues of elder and dowry abuse, this should be done separately from the Act. They also felt that technology-facilitated abuse and coercive control were sufficiently covered in the Act already:

> And so I don't think it should be extended. It needs to be understood as part of it. And if that is happening as a separate thing, like dowry abuse, I don't know, unless it's part of the ongoing system, and what I'm talking about with domestic violence and I think it needs to be something else like elder abuse. It's a different pattern, different dynamic and we need to understand it and we

> do it a disservice if we chuck everything into one basket. And I feel very strongly about that. I care about those things (Directorate#2).

The following comments should also be noted, as they highlight some of the complexity associated with proving certain types of behaviour constitute FV:

> we need some case law that we never have...So those women can claim economic control, so do you have to look at the motive? Or do you just look at the fact? And the fact is... they [the applicant] might want to go out with their friends or something and they [the respondent] say no, that can absolutely be economic control, but how do we protect? (JUST#11).

Police Issued Safety Notices (PISNs)

Support for PISNs

Nine stakeholders, mostly from the FV women's and justice sectors, felt that PISNs should be introduced in the ACT, with one questioning why these notices had not yet been implemented, as they have been in other jurisdictions. In their view, introducing PISNs would ensure there was 'harmony in the national legislation', noting that:

> the wheel of law reform is a slow-moving beast, but it seems like how, I would be really concerned as to why that wouldn't be here, if it's in all of the other states and territories except for one (FVW#1).

According to FVW#6,

> the problem I would say with it is that our legislation is predominantly applicant-based. It's the person that's experienced the violence. … there's the idea that the person that has experienced the violence is also supposed to appear there and say, 'I want an order', because if not, their voice, again, isn't heard….But if it's a police officer is the applicant, and I'm a protected person, there's less level of risk for me.

Directorate#2 stated:

> I want to live in a community that says this isn't about a domestic, this is about what we expect people, how we expect people to behave in their homes and their relationships. And, for me, police-issued orders is one of the ways that you can really send that message.

JUST#12 was concerned about the 'risk that such a measure will become an "out" for police from properly investigating and charging with criminal offences where appropriate', but felt this mechanism could be effective, so long as there were 'appropriate safeguards' around their use. JUST#12 also felt that police would need to be provided with clear guidelines in relation to their powers to issue PISNs:

> Police generally prefer to operate in a decision-making environment characterised by certainty, so any implementation would need to take that into account and be set up accordingly. By this, I mean eligibility etc would need to be very clear for police to clearly understand the circumstances in which such an intervention could be pursued.

JUST#17 did not think the measure was necessary, given 'the current after-hours duty service the magistrates are providing', but conceded that PISNs would take some of the pressure off magistrates and could be useful, as there is 'a potential for a magistrate not to be available', but also recognised that the issues with disturbing magistrates would simply be shifted to others in the criminal justice system.

By contrast, JUST#1 was strongly supportive of PISNs:

> A significant deficiency of the 2008 Act was the absence of a provision for police issued FV safety notices. [We] supported the recommendations of the 2010 joint report by the Australian Law Reform Commission and the New South Wales Law Reform Commission which advocated for the legislation of police issued safety notices.

JUST#1 further argued that such notices would 'provide an effective, balanced method of ensuring protections afforded to those affected by FV are maximised and meaningful [and] minimise the trauma experienced by victims and remove barriers to accessing interim and full FVOs', but it was acknowledged that:

> where consent of the applicant is obtained, it would be preferable for all Family Violence Safety Notices (FVSNs) to proceed to court for conversion into an interim FVO. This approach would provide benefits to FV victims, however would also likely have resource implications for police, courts and other agencies.

JUST#1 suggested that officers of the rank of sergeant or above be allowed to issue an FVSN without contacting a judicial officer 'with the consent of the protected person as a general rule'. This order would last a minimum of five days and would 'automatically act as an application and summons to Court for an FVO'. In terms of whether additional processes were needed to facilitate PISNs between the courts and police, JUST#1 believed that such resources would likely be minimal and provide victims with better protection and 'and negate the need for regular calls to the on-call Magistrate'. However, this model would require:

> further engagement with the Courts … to better understand the resourcing and logistical implications of a FVSN-to-FVO framework, including the potential requirement to create additional hearing lists to facilitate FVO applications arising from a FVSN. The creation of a dedicated list for such applications would provide clarity to applicants and respondents and ensure a consistent approach to FVOs by stakeholders, including the judiciary, legal practitioners and support services. ACT Policing and the Courts are pursuing technological developments to enable greater integration between the agencies' respective information databases. Further investigation would be required to determine the technological impost of automated transfer of FVSN information from ACT Policing databases to those systems utilised by the Courts.

JUST#15 agreed that proper management of this model would be crucial, but felt 'it could be a useful tool *if it's administered responsibly*'. Another participant raised the issue of what would be done with the accused person after the notice had been given:

> I think it's a good idea, but *someone has to figure out how do we deal with potential, like, removing someone from the property for a period of time.*

> …Because certainly, it's kind of just pointless that we could just leave the victim with a very angry person (JUST#3).

FVW#2 advocated for the broadening of police powers to also remove perpetrators from their homes:

> I think that police issued safety notices are necessary and should cover a timeframe that is reasonable until the matter can be heard at court. I think that police could have authority to remove perpetrators from homes too, at least for the timeframe until court.

Finally, Directorate#3 did not 'know whether that is in fact how it would play out', but saw scope for PISNs to:

> enable a crisis worker, with the police, to work with the courts for that protection order in the middle of the night, where they otherwise might have had to bring the person into hospital to keep them safe.

Concerns about PISNs

Despite the support expressed above, the majority of stakeholders (n=11) who responded to this question from across all sectors held concerns about PISNs and their implementation in the ACT. Some questioned why it was necessary to have PISNs, in view of the other protective mechanisms that are available in the ACT:

> Because one option would [be], without the need for legislative change, in my view, if they were taking out after-hours orders when they needed them and then making quality applications for orders the next day, then they may well not need these (JUST#6).

> In some ways, I think it might be moot for me, because … *if we had the capacity and the culture, which was that that was happening [orders being made], then you wouldn't need to have these safety notices* (Directorate#2).

Directorate#2 also stated:

> I'm sure the police would say they're often not charming, but some of that charming stuff, the gas-lighting that perpetrators do, they're also doing to people in the system. And I don't think we're very good at determining that. … *So, it has an issue for me about if we gave police more powers, they've got to have more skill in being able to determine that.*

According to JUST#6, 'while there is merit in consideration of PISNs, the matter should be deferred until after government has considered the role of police in applying for FVOs'. Another participant felt that PISNs would operate similarly to available orders, particularly if police did not have the power to remove a person from the premises. Further, they recognised the importance of victims applying for orders themselves, rather than by police. They also felt that the notices would be rarely used:

> *It seems to me that if it is quite narrow, it's probably barely going to get used.* Well, if we're not seeing use of other powers, adding another one, is it going to really change things for people? It might change things for a few people, but probably won't drive a big change (Directorate#4).

Other participants did not think the option would be helpful and could ultimately increase safety concerns:

> Why put a PISN on someone that's sitting in lockup waiting to go to court because then there's going to be bail conditions put in place …. *My concern is, they've got to be very careful.* Again, if their default setting is going back to the safety of the victim and children, then it should be a no-brainer, this shouldn't be a problem, but, at the same time, don't want to make matters worse (FVNW#3).

> I think there are safety concerns in relation to what happens if there's a kick-out order. And police hand effectively a piece of paper to a perpetrator, and say 'you can't come back now' and then they leave. He walks around the block and comes back and the violence escalates (JUST#14).

JUST#4 also questioned what issues might arise *after* a notice had been issued:

> So, that kind of gets us to where the safety notice is issued, but then how does that convert into some kind of court-approved order? If there is a court-approved order, does that lapse and then what happens to the victim? How does that get carried on by ACT Policing if it does get carried on? And, again, that links to the powers that we gave ACT Policing tying that into the emergency orders or the after-hours orders (JUST#14).

Another participant noted that police often did not take issues of FV seriously and so questioned how useful PISNs would be. Further, they noted there was a lack of information regarding how cases were flagged in police systems:

> We feel that we have about a 50% hit rate that that [i]s taken seriously still with police.… right now, we don't really know, our staff don't know if that's been flagged in the system, how it's flagged in the system? We just don't know (FVW#4).

Several raised questions about the need to increase police powers, given the existence of after-hours orders (although comments in the previous chapter suggest these are under-utilised):

> I … could not conceive of a particular circumstance where you can't reach an after-hours magistrate on the telephone to get an order [or] the person hasn't done something where the officer has a reasonable suspicion that you've committed an offence that you can be arrested for. ….. *we don't like to see an expansion of police powers if they're not at all necessary*…. it is far preferable that a judicial officer make an assessment of the merits of an application before an enforceable order with criminal sanctions attached to it is made (JUST#11).

JUST#13 also felt that 'they sound very much like after-hours orders, to be honest', as well as noting that 'there is already, amongst police generally, a great willingness to say you know "go and get an order", instead of applying criminal charges, and [I'm concerned] that this would become a substitute'.

JUST#7 asserted that the introduction of PISNs ought to be delayed until there was clarity about the role of police in applying for orders. Similarly, JUST#6 stated:

> I think we need to iron out what the current role for police is in the space of family violence orders before we jump towards a consideration of police issued safety notices.

In this context, the following comments of JUST#6 are relevant:

> police did not employ lawyers, or police prosecutor positions, who would be starting in the cases where they considered it necessary to maximise the safety of the applicant to be the applicant for the order for that individual. Instead, they employed two order liaison officers. *For the first two years, that was two men, who did not have legal training, whose role was very murky.* They were based in the Family Violence Coordination Unit which was created just before the new Act. They were having this role of sort of calling people up the next morning after police involvement, having a chat with them, and often sending them over to Legal Aid or DVCS or perhaps going with them to the Legal Aid or DVCS appointment.

Mixed Perspectives

Five participants provided mixed responses, as shown in the following comments:

> We have big cohorts of ACT clients who just want somebody else to do it for them. But overwhelmingly what we are seeing is people are loving the empowerment of doing. ... They sit with the empowerment, 'it's my choice. This is what I want. I can drop it, I can change it. I'm in control of it'. And the negatives with, I guess, the police is that they're not in control of it. …Then [again], any way for a victim to have any protection measures put in place that is a benefit to the victim, is an improvement (FVW#3).

> There are some people who this safety notice will work for, because they're fearful of the law and what that means and what it can mean for them, but there are others who are much more hardened and have a long history with the law and have no respect for it and will continue to behave in the way that they have been (FVW#5).

> Well only if there's a gap there, and I don't know that there is… where applications are largely made by police, like in NSW, that is really problematic …it was very hard to get the police to apply and then the assumption was if the police hadn't applied, there wasn't any basis to it…I don't believe that the power to apply for the order should lie largely with the police [but] I certainly don't mind it being a back-up (JUST#8).

Potential Issues with Compliance with the* Human Rights Act 2004 *(ACT)

Participants were also asked whether they believed that the implementation of PISNs could represent a contravention of the ACT's human rights principles. Only justice sector participants responded to this question. For the most part, while some felt that human rights issues would be raised, they felt that these were mostly manageable:

> I think that [PISNs are] a good idea in the short term. …I think that, given the *Human Rights Act* issues, that they need to obviously go before a court at some point. But there should be a provision for people to be able to consent and make that a formal interim order and just move forward. So, basically, if the

> notice is issued, and the respondent says, look, I'll accept it on an interim basis. … [but] this notice should be with the client's consent, it should not be done without that consent (JUST#3).
>
> [A]s long as there was a sufficient review process for that order which could follow the process of seeking review of an interim order, should either party wish to amend that safety notice before it concludes… And there'd be issues around consent…of the victim (JUST#6).
>
> So I think, on a sensible application of the *Human Rights Act*, it probably is [acceptable], but I imagine that there would be those that argue that it would be a breach of a human right, if one has a lopsided interpretation of the *Human Rights Act*, rather than a balanced right (JUST#15).
>
> The problem with it, of course, is that you're imposing a judicial-like obligation without a judicial hearing, imposed by something other than a court... So, you've got that issue, but, having said that, there's some parallels between that and the process of binding someone over to keep the peace, as well. But that binding someone over to keep the peace is normally consequent of put on arrest, and where that power would be necessary is where there's no basis on which to arrest someone, but there are strong indicia that there's a risk that requires a separation. You know, the question to be asked of it is if you were going to use that mechanism, could you justifiably then tack onto that the option to make an *ex parte* order, when effectively somebody's already been bound by that notice? (JUST#16).
>
> Look, I think there are in a sense [issues] with the *Human Rights Act*, I think the *Human Rights Act* is a big encompassing part of the ACT, which kind of requires that due consideration and the rights of the victim really be considered fully, including her right to continue the relationship. And I think kind of the challenging space, where this kind of thing has occurred in other jurisdictions, they don't have [similar legislation] (JUST#2).

According to JUST#1:

> judicial review of a FVSN during the FVO application hearing can provide appropriate judicial oversight of police actions and maximise compliance with the *Human Rights Act* 2004 (ACT). FVSNs will aid in protecting the human rights of the victim through the imposition of reasonable and proportionate restrictions upon the respondent.

JUST#1 provided a detailed description of the legislation's relevant sections and possible ways to ensure compliance. Due to space, we provide only one example from the submission, which looked at section 11 of the *Human Rights Act 2004* (ACT) – protection of the family and children – and noted that a FVSN could separate a family, through a non-contact condition, for a period of time without immediate judicial oversight. However, they pointed out that compliance with human rights could be achieved through:

1. **Senior officer oversight**: the FVSN should only be issued by a member performing the role of sergeant or above;
2. **Obtaining consent of both parties**: where possible, police should obtain informed consent from both the applicant and respondent. However, where

the respondent does not consent police must have the power to issue an FVSN if satisfied it is reasonably necessary to do so; and

3. **Appropriate timeframe**: setting an appropriate expiry timeframe to ensure the application is heard before a Magistrate promptly.

It is important to note that, in reconsultation, JUST#6 suggested that

> technical advice such as that regarding whether PISNs or any other initiative is human rights compliant should be specifically sought from the Human Rights Commissioner and other relevant stakeholders who have the necessary human rights expertise in this area.

Section 9F of *Bail Act 1992* (ACT)

Section 9F(2) of the *Bail Act 1992* (ACT) provides that an authorised officer 'must not grant bail to the person unless satisfied that the person poses no danger to a protected person while released on bail'. In *An inquest into the death of Andrew Nolan Christie*,[56] Magistrate Cook recommended that this presumption be amended to a lower threshold.

There was little clarity on this issue, with the majority (n=17) either having no comment on this issue or being ambivalent in their views. This ambivalence was expressed through comments such as: 'by not giving a person bail, is that really going to help the situation? (Directorate#1); 'because of the complexity, I don't have a firm view' (Directorate#4) and 'I feel a bit conflicted…[but] I think that initial stopgap is to create some initial safety is really important' (FVNW#2). FVW#3 responded positively but misunderstood the concept of lowering and equated it with 'lowering' of the threshold with adopting a broader conceptualisation of the idea of 'risk' or 'danger' that would include non-physical or property damage.

Others pointed to the way the section was interpreted as being the issue: 'I guess it's more just the way it's interpreted and the operation of it and the consequences it has in terms of trying to get people bail' (JUST#5) and 'the problem isn't in the legislation, the problem is in the application and interpretation of it' (FVW#1). FVW#6 described the 'watering down' of bail conditions this way:

> And what they do is, they set all of these bail conditions, and then one by one ... I see this all the time in my role now... One by one, every week, we're applying for bail variation and slowly, but surely, they cut away at all of the bail conditions that were put in place. We'll say, 'We'll do strict bail conditions. They'll have a curfew, they'll have this, they'll have that'… and then, one by one, every week, they put in for a bail application.

Support for Reform

A minority of stakeholders, all working within the criminal justice sector, felt that the threshold in section 9F of the *Bail Act* was too high and worthy of legislative amendment. JUST#17 agreed with Magistrate Cook's recommendation that the threshold for bail should be lowered. For some, allowing police to have, in essence, very little discretion to allow a person accused of FV to receive bail was undesirable, as it represented an 'arbitrary policy' or 'absolute rule'. As JUST#11 noted: 'to not allow the police any discretion at all potentially can be very damaging, not just to the defendant but to the relationship between the defendant and the complainant'. According to JUST#15, '*if we start to have absolute rules that outweigh the facts of the matter, like*

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mandatory sentencing, it results in dangerous consequences'. This participant also questioned whether there was any evidence to suggest that the provision was effective: 'the question is, is remanding more people in custody in that little interim period reducing domestic violence and I don't think there's any evidence of that'.

JUST#16 recognised that the provision went against principles of proportionality, as 'one of the difficulties to say "no risk" is the proof of none is a disproportionately difficult thing to do and that *proof* … imposes a test which is not necessarily the corollary of the problem that's being dealt with'. Accordingly, in their view, there should be an amendment that:

> encompasse[s] the degree of risk into that definition, so it's actually an assessment of degree before you determine whether the person will be in liberty or not…. *you could use 'unacceptable risk'.*

There was also recognition that this provision could go against the victim's wishes and not allow them to be heard on the matter:

> there should always be provisions for hearing what the alleged victim's position about bail is…. The victim's wishes, well, is kind of key to the whole thing, really. …So certainly, in the family violence context, *I feel very strongly that it needs to be woman-led, or applicant-led, not police-led* (JUST#3).

JUST#11 was also concerned about respecting victims' wishes:

> I've had many, many applicants over the years – or complainants, rather – contact me *quite distressed that their partner had been locked up for 24 or 48 hours.* It might've had an impact on their job… on the child, it's the sole breadwinner. They never contemplated that this could happen; all they wanted was whatever was going on to stop, they wanted a cooling-off period and, all of a sudden, it's been completely taken out of their hands.

While recognising that there were advantages to the provision, including that it could act as a 'circuit-breaker' and be 'very sobering' for an accused, JUST#9 also pointed out that the provision was particularly problematic for young people being detained overnight:

> we are seeing young persons arrested for family violence offences that are maybe better being diverted somewhere else, but they're arrested…They don't get released, because the people who they could possibly be released to are usually the family of…the protected person.

The solution was seen as fairly straightforward for some: the provision could simply be removed, with reliance then placed on section 22 of the *Bail Act,* which contains the general power for granting bail to adults before the courts:[57]

> the same bail criteria, having regard to all the risks set out in section 22 of the *Bail Act,* with perhaps one additional feature, to recognise the unique nature of family violence. And that is that *the custody sergeant must consult the victim* (JUST#11).

[57] See *Bail Act 1992* (ACT) s 23 for the criteria for granting bail to children.

> If there's a real risk for the victim and that risk can't be mitigated, section 22 of the *Bail Act* covers that. Imposing another set of words, with another structure, is a political remedy. The solution's already there. Section 22 of the *Bail Act* says that if a victim's in danger and …the judicial officer can't be satisfied that that danger is mitigated by a bail condition, they remand them in custody (JUST#15).

No Reform Required

A larger group of stakeholders (n=9), with individuals across all sectors, opposed the idea of lowering the threshold for bail. Several favoured the more risk-averse approach allowed by the current threshold, seeing it as providing additional safety. As FVNW#3 stated, 'if you think there's a risk, then why would you release someone out if there's a risk?' For some, this was particularly important, given recent high-profile cases where women were harmed or murdered by an abusive current or former partner, with JUST#4 arguing 'I don't think it should be lowered when we look at Tara Costigan [and] what happened there'. The following participants had similar concerns:

> It is serious, the amount [sic] of deaths that are occurring for women is so profound that I just don't think we can afford to do it right now. And so, if we get that sorted and we start to get the systems better and some of those figures change, but I just think there are too many fatalities of women and often by people who are on bail (Directorate#2).

> It might have been just a one-off, random experience, but they've had experiences of domestic violence, which hasn't been extreme experiences in the big, broad scheme of things, in terms of really typical violence and ongoing violence over many years, it could just be a one-off incident that's happened at home, police have been called, they've been released on bail because they haven't been seen as a risk and then he's gone and murdered everyone (FVW#5).

For JUST#13, having a lower threshold for bail would communicate to the victim that the threat to them was not taken seriously, which 'does have an impact on victims, where he's been arrested and then he's out the very next day'.

Some participants, while somewhat opposed to the idea of changing the threshold, indicated a willingness to consider the idea, with further information or safeguards in place:

> It should not be lowered. Or at least robust protective elements for victims must be implemented at the onus of the perpetrator, not of the victims once again, as with everything else (FVW#2).

> I'm favourable to the notion of a case where a victim is clearly expressing a view for particular reasons that they want that person out. The ability to pay the rent, etcetera. But it would represent, in my view, because of resourcing primarily, the views before the court at the point of bail application [are] very limited in terms of the victim consultations being done…. And I think you'd want to have some really good evidence that consultation was being undertaken in every case (JUST#6).

JUST#1 supported the high threshold to support victim safety, noting that relaxing this test may be appropriate 'if legislative amendments were made to enhance the safety of FV victims and their families'. It was suggested that the ACT might consider reforming the *Bail Act* to match the NSW

bail model, which provides appropriate protections to victims of serious offences (including FV offences), although 'the potential incongruence this may create with the *Human Rights Act*' was also recognised.

JUST#7 expressed concern that 'any changes to section 9F in isolation may unintentionally result in reduced safety and wellbeing for family violence victims'. Accordingly, it was suggested that further consultation be undertaken 'that considers the interaction between section 9F and other family violence policies, including the extent to which agencies are resourced to consistently seek and take account of victim views in bail and prosecutorial decisions and police custody practices'.

According to JUST#12, what is required is more training for police on when they could exercise their discretion:

> It is a very rare circumstance where bail is granted at the watchhouse. It is arguably also a rare circumstance where the threshold can be satisfied and police are prepared to grant bail. I think there are good reasons for this. That said, I think police often don't properly turn their mind to it and instead press on as if they have no discretion at all. I don't think it should be changed, but I do think there could be training to empower police to exercise their discretion in appropriate circumstances.

Preventing the Subpoena of and Cross-Examination on Victim Impact Statements

Support for Reform

Most stakeholder organisations (n=20; across the different sectors) who responded with an opinion to this question were supportive of a legislative amendment to prevent the subpoena of and cross-examination on a victim impact statement (VIS). Many thought the purpose of the VIS was to provide victims the opportunity to describe the impact the offence had on them and was a time to 'suspend the adversarial process' (JUST#15) and 'any opportunity to… *reduce any re-traumatization of the victim*, anything that the law can do to prevent that would be a good thing' (INTER#1). In the view of many participants, this purpose could be lost or degraded if victims were unwilling or fearful of providing a VIS, out of fear of being cross-examined:

> I'm inclined towards yes, there should be [an amendment], because that is not the purpose for which the victim is offering the statement. And it's a disincentive…if it could be used in that way (Directorate#4).

> I think that a victim impact statement can be really important, I think it can be a really important part for women to feel that they've actually been able to articulate what is the impact that it has actually had…. I don't think victims' records should be used [for cross-examination] (FVNW#2).

> *Cross-examination of victims is a daunting experience for women surviving intimate partner and family violence*. They already feel the intimidating and stressful experience of attending court and often, by simply being there, they are exposing themselves to risks (FVW#2).

> that statement is often for victims the clearest opportunity that they have to espouse the impact of the crime on their lives … [it] contains personal reflections, reflections from family members, [is] very emotional content at

> times and, within the requirements of the [*Crimes (Sentencing)*] *Act* [*2005* (ACT)] and the ability currently to subpoena those simply means that people are less likely to prepare them ahead of time, which means that more victims miss out on giving them and the courts don't have the benefit of them and that's really unfortunate (JUST#6).

JUST#7 supported limits on access to a pre-prepared VIS prior to a determination of guilt, but noted that any amendments of this nature would also have to balance the rights of the defendant to a fair trial under the *Human Rights Act 2004* (ACT).

One participant (Directorate#3) felt that allowing cross-examination of a VIS represented a form of institutional abuse, which is not conducive to healing. JUST#15 likewise suggested that:

> the real benefit [of a VIS] is therapy. When someone is expressing the harm that's caused to them, when the other side either cross-examines them or pulls it apart and starts to object to patches of it, it just impacts the therapy…Cross-examining a victim during a victim impact statement is just re-victimising them….It's one of the very few times that a victim gets a voice in the criminal justice system, which inherently, from start to finish, is about the defendant….It kind of brings them in and if you … start to put all these parameters around it and create a potential cost, you're kind of undoing the one piece of moment that a victim has in the process (JUST#15).

Several participants felt victims are quite constrained in what they can discuss in their VIS and viewed the ACT as being quite conservative in its legislative approach. For example, FVW#1 stated:

> I have some situations where a client writes a victim impact statement to go to court and a lawyer comes back and says 'Oh no, you can't say that. You have to say this in a particular way and you can't do this, this and this. But what you can do is this and that will stop their being able to cross-examine you'. So, it's like we make one step forward and then we go 50 back.… that was never the intention of victim impact statements, but we've turned it into this briefing process that removes any capacity of the therapeutic nature of society saying, 'We're really sorry this happened to you'.

As a consequence of victims' concerns about what happens to their VIS, workers had observed a 'rare' uptake:

> Our uptake of victim impact statements is ... quite small. And we're kind of looking at why that is. There's a real fear of the defence having possession of that and therefore the defendant getting to read it. There's a real fear around it. Is it read out? Who reads it? (FVW#3).

FVW#6 had observed some women not doing a VIS because of concern that it would be used in Family Court proceedings to say, 'she's an unfit mother'. In addition, this participant noted there may be a perceived risk, 'because if the likelihood is they're going to get out on time served, they don't want the defendant to know how afraid of them they are or have the defendant have more ammunition to be angry'.

JUST#13 had similar concerns:

> also it can be used to undermine you in Family Court proceedings. …'I've been diagnosed with depression and stress-related illnesses and everything like that' and then, bang, you get it served up to you in the Family Court, as not being able to have the children because of your mental health. So, it would be a deterrent against being honest with the sentencing court.

FVNW#1 was concerned about the potential use of these provisions against children:

> For me, that then just re-traumatises the victim. … and that sense of betrayal, with all due respect to lawyers, one picking up one of our case notes and then hammering a 10-year-old kid. 'Why did you say this to the counsellor?'

One participant distinguished between a legal statement that was given to support charges being laid and a statement for the purposes of sentencing, arguing that the latter should be protected:

> even the name itself, it's about this is the impact that it's had on the victim. I don't think it should be cross-examined, because it's about what happened for them. You know, it's not a presentation for which somebody will be charged. It's about saying 'this has been the impact on me' (Directorate#2).

Two justice workers were not concerned about the use of a subpoena for a VIS, but were against the cross-examination of the victim:

> I guess the subpoena for victim impact statements, doesn't trouble me that greatly… [but] I feel very strongly, actually, against cross examination of victims on victim impact statements. I think that those are ridiculous. I don't understand why it would be allowed, because you know the victim is simply the person's been found guilty and the purpose is for the victim to … to say how it's impacted them (JUST#3).

> I mean the VIS is public, once it's in the court and it's been tendered, it actually becomes part of the public record really... I wouldn't be necessarily supportive of a legislative amendment to withhold that, I suppose. [But] you wouldn't want a victim being cross-examined about an assault [about] which they put in a victim impact statement and [the offender] was sentenced and then now they're being cross-examined on this statement, which has already been accepted by a court and not challenged. So, it would be quite inappropriate to then challenge it in a different forum [ie, another court proceeding] (JUST#9).

JUST#1 supported 'reasonable limits' being placed on the cross-examination of victims, which would allow there to continue to be protections in place for the defendant 'to allow for a cross-examination to occur where there is evidence that a victim is making a highly embellished statement'.

In reconsultation, JUST#6 suggested that that there 'appears to be a lack of understanding by some stakeholders in regards to the purpose of a VIS' and clarified that its purpose is for the court to consider the impact of the offence on the victim in sentencing the offender. Accordingly, it was suggested that the right to a fair trial under the *Human Rights Act* 'requires the offender to have an opportunity to test the VIS through cross examination'. JUST#6 therefore proposed 'consideration

of a less severe approach, for example, the requirement for defence to seek leave from the court prior to cross examining on the VIS for all matters'.

No Reform Required

For those six participants opposed to legislative amendment, there was a recognition for the need for accountability and to avoid simply accepting a victim/accuser's version of events:

> I might conclude that, well, understanding how the victim impact statement came about, there's not significance that comes from the inconsistency or there is a high significance that comes from the inconsistency in terms of dealing with reliability. *So,* the capacity to test the reliability of the evidence which justifies the making of the orders or some other judicial outcome, I think it's quite imperative how you draw boundaries around that, so you're not traumatising people, [but it] is difficult, because inherently, there is some traumatising that happens when you test what somebody is saying, but the difficulties dealing with it on terms of your base notion being that if you were a complainer, what you have said is right. If you walk into decision-making on that basis, then you're moving to an unjust system (JUST#16).

A few participants did not believe that legislative change was necessary, because, from their experience, victims were rarely cross-examined on their VIS. According to JUST#12, 'the option to cross examine is very, very rarely used. In fact, I have never seen it exercised'. Other participants also claimed that cross-examination was rarely used by a defendant's solicitor for tactical reasons:

> I definitely do think it's important to have the option… Because you do see things in victim impact statements where you're like, 'Really? I wouldn't mind asking a couple questions about that'.... So, I think it's important to have that there. And I don't think there's a great concern for it, because most lawyers would have the common sense to know what the consequences of using that are (JUST#5).

> I have not seen any examples where the lawyers inappropriately use cross-examination. In fact, most of them loathe to go anywhere near it (JUST#17).

> I would think maybe one in 100 cases where I've seen victim impact statements in the last few years has there been cross examination. So, it seems a non-issue to me to say that … I mean where's the perceived need?…But my advice to every defendant who's about to be sentenced is there is no way, unless you have some sort of written confession from the victim that categorically shows she's lied in the victim impact statement, then there's no way you can cross examine her (JUST#11).

JUST#11 did not have an issue with the idea of subpoenaing the VIS, which they noted was 'more of a family law issue…checking the VIS against an affidavit…because obviously in criminal matters we wouldn't need to subpoena it'.

Responding to Breaches of Suspended Sentence Orders

Support for Reform

In a 2017 issues paper, the then Victims of Crime Commissioner stated that 'the high percentage of suspended sentences imposed for breaches of protection orders sends a mixed message to the

community about the resolve of the courts to respond strongly to the prevalence of family violence'.[58]

Of those answering this question, seven stakeholders, six of whom were from the FV sector, supported the argument that the court's discretion ought to be limited with respect to giving suspended sentences for offenders who have breached suspended sentence orders. Directorate#2 expressed the view that 'women are dying and children are being exposed in a way that's unacceptable to me. So, I think we have to get tough and not lighter. So, that would be my answer in a broad sense to that question'.

FVW#4 noted that they worked with supporting children and, on that basis, agreed with the Victims of Crime Commissioner's view stated above.

For some, there need to be stronger measures of accountability for offenders who breach a suspended sentence. In their view, the current system did not deter offenders from breaking the law:

> *I think we've got huge issues in the ACT around our accountability measures for men when they do breach*, and I think if we as a community want to send a strong message around that violence is not actually acceptable, then we need to be quite clear around them what that means from a criminal perspective. I think from an accountability measure, it [judicial discretion] should be limited (FVNW#2).

> The amount [sic] of suspended sentences that I see come through and when re-offending happens and then it goes through that whole process and they get another suspended sentence ...*So, what is the point of even giving a suspended sentence in the first place?*... If someone wants to behave in an awful way, they don't even have in their mind, 'But I've got this one-year suspended sentence hanging over my head and I don't want to go to jail for a year'. *Because if they've committed enough offences, they know they actually don't have to serve that*. What incentive is there for an offender to behave if they know 'I'm going to get a suspended sentence and if I commit another offence, I'm actually not going to have to do that?' (FVW#6).

Another participant agreed the system was too lenient toward offenders and perceived this as 'to the detriment of victims' safety and to the validation of their experiences of crime. *Actually, those breaching orders or suspended sentences should be further penalised*' (FVW#2). Those working in the women's sector recounted situations where an offender repeatedly breached court orders, with few consequences:

> where I've seen it not work at all is where someone is fronting up to court again and there's been 30 breaches of the Family Violence Act and no application [of the suspended sentence] (FVW#1).

> We've had women… [where] there's been breaches, either there's no charges been laid on the breach or, if they have been, then it's been suspended or dismissed (FVW#5).

[58] ACT Victims of Crime Commissioner *Issues Paper: Suspended Sentences* (2017) 4. See also *Crimes (Sentence Administration) Act 2005* (ACT) s 110.

> So, I've seen it particularly with one, which was some really horrific charges. There was a really long suspended sentence. They re-offended within a month. They spent maybe six months in jail, but on remand. But the suspended sentence was nine or 10 months. They received another suspended sentence. The good behaviour order was cancelled. They got another good behaviour order and they got out in time served. And they were sentenced to the rising of the court for their suspended sentence... And there was also family violence orders in place every time they re-offended. So, they re-offended with some violent assaults and breaching an order.... This person had so much disregard for the law and every time they got out on bail, they'd breached their bail, got back into jail. It's just so much stuff, and then this victim just thinks, 'What is the point here, for me?' (FVW#6).

One participant felt that magistrates were not adequately educated on these matters to be able to make sound decisions:

> *I don't think the magistrates that are hearing these matters really have an understanding around the complexities around DV and the impact that it has on women and their children.…* with some of the orders that are being made and suspended sentences, you just have to ask the question, really, what do they know around DV because *who in their right mind would suspend a sentence after someone's beaten the crap out of somebody else and has done that in front of their children as well?* (FVW#5).

No Reform Required

Eleven stakeholders, most from the justice sector, did not agree that the court ought to be limited in its ability to order another suspended sentence for breaching a suspended sentence. For many, it was appropriate for the court to make these decisions and it preferable not to fetter that discretion:

> I mean, sometimes that suspended sentence is breached with the client not actually knowing he's breaching it. So, let it be judged. *The magistrate can determine what level, if it was a pure, serious breach or a negligible breach or something* (FVNW#3).

> [I]f you make things too clear-cut and binary, you remove the court's discretion to apply justice, or dispense justice…I think we need to have some faith that decisions can be made for the right reasons. A good way to proceed would be to identify some considerations which might need to be taken into account and that then gives a court a guide (JUST#17).

> *[F]or the record, [I] would strongly oppose again, removing a discretion or having a statutory presumption in favour of activating the suspended sentence for the simple reason that we say courts, all sentencing courts, should have as much discretion as possible in every circumstance.* There is a significant amount of jurisprudence now around… from our Supreme Court, about the circumstances in which it will be appropriate or not appropriate to activate a suspended sentence. So, for those who might seek to argue that purely based on the statistics that courts are seemingly reluctant in appropriate cases to activate a suspended sentence when it's breached, in my submission, that's simplistic and a little bit not giving the courts as much credit as they should be given (JUST#11).

> In my view, there's a reason why you have an independent judicial officer and *if you start to bounder their judicial discretion, it's a slippery slope and it's starting to look like mandatory sentencing.* In fact, there are a million reasons why one might extend a suspended [sentence]... When you get absolute rules, if you don't cross this T, you go to jail, it's always dangerous (JUST#15).

> My default answer would be no, it's appropriately a matter for discretion. If someone's breached a suspended sentence, that's a factor that will be taken into account (JUST#16).

> I'm always concerned about limiting the court's discretion. In my experience, judicial officers are well aware that they're here for breaching a suspended sentence. So, you know, it's unlikely that they would do that, unless there was reasons… this is always the tricky thing. What was the breach of the suspended sentence? Was it one day? Was it one year? Was it five minutes, what happened? The whole circumstance in that, which is why I feel, quite strongly, towards court discretion (JUST#3).

> Look, I think there's always problems with limits to discretion. I think discretion's a good thing. The magistrates are there and they've got a role and I think most of the time they seem to get it right (JUST#5).

> Keep the suspended sentences. I don't like seeing any restrictions on the discretions. *As soon as there's sort of any legislative amendment that fetters that discretion, I'd be like, 'Oh, no, no'.* I don't think there are often circumstances where another suspended sentence is the appropriate sentence. And there are appeal mechanisms in place if the judges are getting it wrong, rather than legislation (JUST#9).

Another participant noted that, while judicial discretion was necessary, perhaps some restrictions could be placed on the handing down of a suspended sentence, depending on whether a similar offence had been committed:

> I kind of think, in reality the judiciary does require that discretion in relation to that, to make the decision…[but] if it was a breach in relation to another family violence offence, like an assault or something like that, you would be hoping that the judiciary would use their discretion in an enforcement way of showing that similarity of behaviour. *So, if there were to be restrictions on it, I think the restrictions need to be in relation to the similarity of the previous offence, or in relation to the top of offending behaviour or something like that* (JUST#2).

Mixed Perspectives

Of the remaining participants, several had mixed views. For example, JUST#1 supported 'the need for suspended sentencing options', whilst 'having concerns regarding the imposition of a suspended sentence where a subject has previously breached such a sentence'. JUST#7 noted the concerns of the former Victims of Crime Commissioner, but noted:

> we have no information available to indicate that the issues raised in that paper have been addressed. To aid consideration of how suspended sentences are currently functioning in the ACT, we would welcome updated information from government regarding:

- the number and nature of matters where an original sentence has not been implemented upon breach of the suspended sentence; and
- the impact, if any, that the use of Intensive Correctional Orders has had on the issuing of suspended sentences.

Limiting Disclosure of Counselling Communications or Claims for Financial Assistance Compensation

Support for Reform

The majority of stakeholders who expressed an opinion on this issue (n=18) agreed that legislative amendments should be introduced to limit the disclosure of counselling communications or claims for financial assistance compensation. For a number of stakeholders, this was an inappropriate use of personal information that had not been collected for that purpose. Directorate#2 did not agree that 'you should be able to pull those files at all. I think if you go to counselling for anything it should not be able to be used in a case like this'. Directorate#3 noted that 'a counselling record has a lot of detail about a person's thoughts, feelings, impact'. FVW#3 observed: 'We talk about human rights. I fundamentally believe *it's against the basic human rights*…Why can't we use that as an argument for this?'

Some participants highlighted the need for victims to feel safe about seeking support. INTER#1 felt that 'creating spaces where they feel more supported to disclose and share information is really, really important'. Similarly, JUST#15 suggested that counselling sessions 'are not an evidence-gathering process, *they're a therapeutic process*, and if you move them into the evidence space, then all of a sudden you limit people's ability to talk freely with their counsellor'.

JUST#3 was concerned 'we're meant to be encouraged to seek help and seek support and anything that would make them not seek support should be avoided'. JUST#4 was concerned that the current model '*may stop somebody getting the counselling* that they need if they think it's going to be used against them'. Likewise, FVW#2 feared victims would not engage in help-seeking if they felt this information could later be used against them:

> It has been seen that victims will not access, when often most needed, the assistance and/or compensation that they do deserve, due to legal proceedings and advice from solicitors concerned with the advancement of their case and what things can impede this to happen successfully.

Others were concerned that having access to this information would provide another avenue to the perpetrator to harm or intimidate the victim and the harms outweighed the benefits. For JUST#8, 'it might be vaguely relevant... but it's not sufficiently probative to warrant the risk that it involves to the victim'. Others expressed similar views:

> I think there should be a protection there, I don't think they should be able to access those documents… because of the way that power and control works, so many elements of family violence are so easily twisted and turned around, that *the ability to be manipulated and for safety would just be massively undermined*. I think it's too dangerous (FWNW #2).

> Well, what are they going to do with the information? It's going to be [used] as a form to manipulate the victim. I mean, why is it detrimental? What benefit

> has the lawyer got in knowing the information, other than to use it to undermine the victim's position? (FVNW#3).

Two participants described their experience where information like this had been subpoenaed and/or used as a means of intimidating or humiliating the victim:

> there was one specific criminal law firm that, as soon as they said they wanted to write a victim impact statement, they were subpoenaing the victim's support documents for their counselling records… communications and any claims that they're making…this specific law firm was subpoenaing everything (FVW#6).

> There were some people who shared their stories and one of them had an experience of her counselling records being used by her partner and it was all her health records, I think, it was quite extensive information about her healthcare, and it was... to some extent it seemed to be gathered to intimidate and humiliate, rather than actually because it had any actual value to the case (Directorate#4).

JUST#17 felt that 'counselling for violence, any violence, should receive some protection', but saw it as a balancing act, which should be undertaken by the judicial officer.

No Reform Required

Only three participants did not think a legislative change to provide this protection to FV victims was warranted. For example, JUST#11 explained that having access to these documents could benefit the victim, by helping to demonstrate that 'that there's been a long and consistent record of mum trying to get assistance'. JUST#11 also felt that judges were 'pretty good' at ensuring the provision was used appropriately. For JUST#5, the documents could be relevant to the proceedings, but this participant saw the need to encourage counselling and was open to 'barriers' for protecting the information:

> it's [important] to be able to get access to everything that's going to be relevant to a potential defence of someone who's looking down the barrel of jail time. But, on the same token, I can see, even from a defence perspective, we don't want to discourage people from being open and honest and getting the proper counselling that they need…So, from my perspective, sure practically it makes it easy. But I could understand why you might want to at least put a barrier up (JUST#5).

Managing Third-party Partner Contact

This question considered the issues that may arise where perpetrator programs facilitate contact with the victim and/or perpetrator's current partner. Perpetrators will usually be required to provide contact details of current or ex-partners as a prerequisite of participation in the program and providing such contact details may be construed as being in contravention of an FVO that has a condition requiring the respondent not to make contact or cause another to make contact with the applicant under section 43(2) of the Act. The employee of the entity providing the program may also be liable for aiding or abetting the commission of an offence under s 45 of the *Criminal Code 2002* (ACT).

Support for Reform

The majority of participants who commented on this issue (n=15) felt that changes were needed. These participants came predominantly from the justice sector, FV non-women's sector and Directorate participants. Some were focused on the need for improved inter-agency communication. For JUST#2, the need was to ensure collaboration between the different parties:

> It's more having an awareness, and I think being able to really work well with each other, and just having really consistent points… it's really just a case of just really agencies being really able to work together.

JUST#1 referred to:

> the challenges often experienced in engaging perpetrators in education programs. Court-mandated programs for perpetrators may assist services in sharing information and working collectively to ensure the right service is provided at the right time to the perpetrator and their family. These programs would need to be negotiated with the Courts to address access limitations between the parties and *ensure that such programs do not unintentionally dilute the effect of FVO conditions.*

For one participant, it was simply not 'good practice' to place barriers in the way of partner contact being offered in a constructive way:

> Well, *we shouldn't be running perpetrator behaviour change programs without partner contact being offered to the partner.* That is not good practice. That doesn't mean the partners are less happy to take it up, so they obviously can opt into that or opt out of that, but yeah, I think it creates... it's not good practise to put barriers in the way of partner contact actually being offered (Directorate#4).

Another participant felt that the safety of women and children could only be improved if contact was permitted between them and the facilitators of programs, with FVNW#2 noting that '*the whole reason to work with men is to improve the safety of women and children* and we can't do that if we don't have contact with them'. Some thought that, without change, 'we could lose people that are putting their hand up for change' (FVNW#3).

Several participants noted they had never heard of any person being charged under these provisions. Directorate#2 had 'not heard where that's been a problem, where anyone's been breached'. JUST#6 had also not seen any charges laid. FVNW#2 described seeking legal advice about this issue, due to uncertainties as to whether they would be breaking the law by facilitating partner contact and added:

> it's something that we very early on got some legal advice around, because the reality is, when men do come into our program, we do ask them for the contact details of their partner, and if they can't give them to us, we will see what recent contact we've had and potentially give the partner a call anyway… so we've just decided from a safety perspective to continue.

Another participant said they had received advice from the AFP that this would not constitute a breach of the legislative provisions, 'as long as we're not passing on any information from him, as

long as our conversation's focusing around working... with the victim, is around their concerns for their safety' (FVNW#3).

Some participants described the strategies they used to work around the rules responsibly to ensure they were not breaching the legislative provisions. Despite this, Directorate#1 felt that changes were needed to allow for the better sharing of information:

> when we meet as a care team, when we share that information, we can use that information just for that purpose. You can't use that information for something else…We do have very strict rules in the way we share our information. But, I think that was the quick fix to us actually not sitting there and giving thumbs and saying, 'I know something I can't tell you because I'm bound by the Act'. So, where we could do things in the best interest with, we could do things that… if you had parties that consented, why would you not share information?

Several participants felt that legislative amendments were needed to provide clarity about whether contact would constitute a breach. According to FVNW#3, 'as soon as we get that taken out [of section 45 of the *Criminal Code 2002* (ACT)] … the better it's going to be for everybody'. FVNW#2 likewise thought that legislative reform in this context 'would change practice quite significantly.…I think absolutely it would be great if there was something to kind of cover off on that so we weren't in the grey space that we are now', while JUST#17 felt 'it would be convenient to have a standing exemption in the legislation along those lines'.

For others, the issue could be solved by specifying in the orders themselves that this type of contact is permitted. This could include safeguards to ensure that only a recognised body was permitted to make contact:

> I haven't come directly across it. But they need to either make that a general exception, you know in the orders they have, 'Except for counselling, except for. …Maybe they can just throw another line in, but they would have to make sure that it was contact by a recognised body and perhaps only in writing, so that you're not going to get a support worker randomly ringing someone and saying, "I'm helping him" or whatever (JUST#11).

> Or you have standard terms of orders, I mean, often you obviously will say, you can't contact someone except at court through a solicitor….Yeah, so that's one way of doing it without any legislative change, but that involves education on how people make the orders, how people seek the orders (JUST#16).

JUST#6 preferred the idea of plain language orders, rather than including additional information into the orders, suggesting that some defence be provided for individuals against claims of a violation, if such a claim was raised:

> if there was some other way to provide a technical defence to agencies or individual respondents who are instructing agencies to communicate with the respondent back and to inform them and offer partner contact, that would be my preferred way forward.

Some did not express a view on the best way forward but agreed that reform was necessary:

> I think we need to do everything we can that allows us to better keep eyes on the perpetrator for the victim…I think it needs to be clear and if it's not, as I

> said, it doesn't really matter that it's not happening. The fact that it could happen, we should clear that up (Directorate 2).

No Reform Required

Four participants did not see any need for reform, with two perceiving facilitating partner contact as problematic generally and potentially involving an increased risk to the victim:

> this is a very serious and contentious area. Given that support services are not necessarily employing people with full skills to navigate such a sensitive arena, attempts should not be made to mediate, negotiate and anything else involving women and children surviving violence and trauma. … *Breaches of privacy and confidentiality are critically dangerous and highly possible, with increased risks to women and children, naturally* (FVW#2).

> I guess I see that as quite problematic. … You can imagine services linking up so that the perpetrator program went through the DVCS or something and DVCS contacted the person, or ways to make it more acceptable. Maybe I don't understand enough about perpetrator programs, but I don't see why a perpetrator needs to be in contact with the victim (JUST#8).

For others, change was unnecessary because they observed that the parties were able to effectively work around the provision appropriately:

> A lot of that is addressed before they apply for the order… in regards to, 'let's talk about what you need to do. Do you need to communicate in regards to the children? Do you need to resolve property stuff?' And the order is manipulated to allow them that (FVW#3).

> Well, no, because I think we got even the advice that it's not a breach … And I don't think there needs to be, … I'm giving them information that's being provided to me about the program, but I'm not saying he's saying this about you. …For our service, I think we do it well because we make sure that there's no breach (FVW#6).

Summary

This chapter has highlighted a number of areas for potential reform. The vast majority of professional stakeholders agreed that the definition of FV should be expanded, with technological abuse raised most frequently. Most also were in favour of two amendments intended to better protect victims from legal abuse: preventing the subpoena of and cross-examination on a VIS and limiting disclosure of counselling communications in FV matters or claims for financial assistance compensation. A majority also agreed that changes were needed with respect to how contact with partners or ex-partners was managed by those involved in perpetrator programs, with a minority in favour of legislative amendment. There was more division and/or ambivalence in response to PISNs, with a majority having (diverse) concerns, although these were not generally concerned with human rights compliance. In relation to lowering the threshold for bail, again, the most common response was no opinion or a mixed response. There were fairly similar numbers opposed to lowering or retaining the current model, with the women's sector participants more likely to endorse the status quo. The court's discretion to suspend sentences for breaching suspended sentence orders was also seen differently, depending on whether participants were employed in the FV or justice sectors. The former focused on protection of the victim as being paramount; the latter disagreed, seeing judicial discretion as the paramount principle.

6. Findings – Lived Experience Stakeholders

For the eight individuals with lived experience who participated in this project, their interactions with the FVO scheme were neither completely positive nor entirely negative. The scheme offered some benefits, whilst also being problematic in other ways. In this chapter, we provide, largely through the participants' voices, a description of their experiences and resulting opinions concerning the efficacy of FVOs in the ACT (see Appendix D for interview questions). First though we see their views on the definitional provisions.

Changing the Definition of FV

When asked about further broadening the legislative definition of FV, several participants agreed that changes were needed to include dowry abuse, cultural abuse, coercive control or technology-facilitated abuse. LE#6's comments were typical of this cohort, as she expressed the view that the current definition is too narrow, stating: 'dowry abuse, well that's horrendous. In Australia, that shouldn't be accepted or tolerated, nor should cultural abuse either…Technology abuse, that shouldn't be done either'. Similarly, LE#1 stated:

> Definitely, I want to see this changed, to include all these things, of course…. And more, yeah, because I know it's like a thin line to say whether it is abuse or not abuse sometimes.

LE#7 agreed that a broader definition was necessary and might help to ensure implementation that more closely mirrored the legislation:

> I believe that most agencies engaged in supporting and dealing with FV still have trouble coming to terms with how the emotional and psychological abuse manifests and how destructive and debilitating they are for the victim. Introducing these other 'aspects' of abuse into the definition would demonstrate an expanding awareness from a legislative perspective.

A number of participants described how they had been subjected to financial abuse, technological abuse and/or coercive control:

> In my thinking, if I want to, you know... but he is smarter. Not say or do anything, but... to me in my thought at the time, 'police not going to do anything, anyway. So, what's the point?' But then I can't handle it anymore. He was distributing my... he's threatened to distribute my pictures, which he took without my consent. I thought of, 'that's it'.... I told him, 'Look, I can't be responsible for what you do, you know? You have to take the responsibility and the consequences. I can't anymore. I know you're the father of the kids. You're doing some favour for my kids. It's your kids, too, but enough is enough' (LE#1).

> Indeed, my experience with non-violent abuse, coercive control and technology-facilitated abuse is more insidious, is drawn out over an extended period of time and can be particularly debilitating for the victim (LE#7).

> That's when I called the police. *Actually, I'm shocked in a good way. Surprised. Which is, 'Oh! OK'. Justice is done. Justice is served* (LE#1).

LE#3 also had recognition from police that this type of cyber-behaviour could constitute FV; in fact, she did not recognise the coercive control present in her ex-partner's text messages, but a police officer pointed it out:

> And definitely one of the police officers in particular. And it was interesting, actually, that it was the woman. But, having said that, the male police officer didn't actually read the text. It was the woman who was looking at the text. She read it, and I hadn't actually told her how I felt about it. But she said, *'Wow, that's really controlling language he's using'….So, that made me, I suppose... feel validated that it wasn't just me feeling a bit over the top, or that I was being too sensitive about it or anything* (LE#3).

LE#2 also experienced coercive control from her ex-partner:

> only after getting the FVO and moving out, even when we were living together, he had ways of monitoring me. He would have cameras installed in the car. When I managed to unplug it, he would check the mileage of the trips and I had to explain why there's this many extra kilometres, where I've been. … you wouldn't think this is possible, but he would know when I use the credit card. So, I had to stop using credit cards. I wasn't given any cash. And then to buy fruits for kids maybe, I managed to find a way…when you... reach a certain amount of FlyBuys, you get a $10 off your card. When I used that, every time I used any of these technologies, he gets an alert….And he was sending all these messages in an encrypted way, where the message itself destructs in 30 seconds. I can't take any screen shots to prove what he was saying. I was taking photos of the screen with another phone I had at the time (LE#2).

In addition, she described other types of coercive control that she had experienced:

> *And coercive control, he used to do that a lot, using the kids.* I remember this one time, it's like drilled into my head. We've moved houses, he wouldn't hire a mover. I was meant to move 86 tea chest-sized boxes. I was so tired and was sleeping and in the middle of the night, he woke up, he has insomnia too, and he wanted me to start unpacking and I told him no, he was going to go and wake up my eldest daughter, who was 10 at the time and my son, who was seven at the time and going to get them to do the work. Knowing that when he does that, I would somehow find the energy and do it.

It was her view that the police sometimes accepted conduct of this nature at 'face value', failing to consider such acts as FV, since they are not explicitly listed in the legislation. She did report, though, that police officers did see more 'tangible' threats, like a package sent to her address, as more serious:

> They're all very understanding, they are, I think they are very compassionate with the way they approach the whole situation. I've never felt intimidated or anything. *They'll listen, but they take a face value of the law*, if it says ABC, that's it. They wouldn't look for what's written in between. …when I haven't deleted my Google accounts, he was updating my Google calendar and he was sending all these invites and whatnot and he was trying to attend to a [X] program where I work and all that. I take it to the police. They read the FVO, they read what he has done and then, because it's about children, because he's

> trying to set up a meeting for that purpose, that wasn't considered abuse, that wasn't considered a breach. But as the person who is experiencing that, it was his way of keeping me under his thumbs.…They took the text messages and the Google invites and whatnot, not too seriously, but when it was the parcel, that was a red flag for them. So if it's a tangible thing, if he was following me, they take that bit seriously, but the rest of it, even though they could clearly see that he was tracking me, my whereabouts….because he wasn't being in the same physical space and threatening me, that wasn't serious enough (LE#2).

Finally, LE#8 pointed out that the current definition of FV, which appears to already be broad in how it has been drafted, may not in fact be applied or implemented in the spirit of the 'black-letter' definition:

> I understood this advice [not to request a child to be named on the FVO] to be based on the belief that a parent's violence toward the other parent can be clearly delineated from their behaviour towards the children. In my experience, this is not correct – while the violence may not be as direct, it often continues in other ways, including emotional and psychological abuse, and ultimately presents a danger to children. In our case, unfortunately it did escalate to become direct violence towards the child. The broad definition of family violence does not appear to be being applied in practice, with potentially harmful consequences.

Examples of Mixed Experience

Application for Orders

We see a mixture of favourable and unfavourable comments in the participants' responses to questions concerning the application for an interim order. For most, this process was fairly simple to navigate, at least initially. LE#1, for example, found the 'process to apply for an interim order very easy and the process will go back to get final order to ask much more from you… because especially we have to be a witness as well'. LE#6, who applied for an order against her former partner, said the 'process of applying for it was quite simple. I went through Legal Aid at the Magistrates Court. All of that part was fine'.

By contrast, one overseas-born woman found the process of getting an interim order under the Act to be daunting. Despite having a legal background, she was overwhelmed by the buildings, the process and the 'legal jargon':

> Walking into the Magistrates Courts, *the building itself was a bit intimidating*. I had support, a friend of mine who was working in the legal system, she was with me, I was accompanied, but still *it was really overwhelming.* I sort of remember thinking, if this building is not that intimidating, maybe I could take it. But having to wait outside the Legal Aid office, it made it so much real… when I started talking to the lovely lady from Legal Aid, things were becoming a bit more clearer and simpler. Mind you, I couldn't remember any of the things I was told at the day. I'm so glad that I had support, because my brain was a haze, so all the legal jargon, the next process, she explained it step-by-step. She wrote it down [but] still it was a bit much to take (LE#2).

Under the 2008 Act, LE#7 had been the potential respondent in relation to an FVO against him and his wife. If their former son-in-law had been successful in his application, their access to their grandchildren would have been restricted, but the order was not granted. Instead, LE#7 was granted

an FVO against the same person in a contested hearing before Magistrate [X]. Then, two years later, under the new legislation and a different magistrate, without cross-examination, his application for an extension of the FVO was dismissed after a relatively short hearing. LE#7 stated:

> Obtaining the original FVO, despite not having been granted an Interim Order, was emotionally draining, but fairly straightforward and, on granting of the FVO, it was satisfying to know that the system had worked to provide me and my family the protections we were seeking. However, although my solicitor advised that applying for, and being granted, an extension to my existing FVO would be even more straight-forward, with the respondent having to demonstrate that such an order was no longer required, this part of the exercise proved to be a waste of time and really only exacerbated the respondent's belief that he did nothing wrong.

LE#8 described the mixture of positive and negative under both legislative schemes:

> My experience of applying for a Family Violence Order since 2016 has been that the process, when supported by the Legal Aid team at the Magistrates Court, was relatively straightforward. Even though I have a good level of comprehension and previous experience with applying for FVOs, there were still areas where my answers on my most recent FVO application (2018) had to be amended by the lawyer before being submitted. *Perhaps there is scope to revise the application form, using simpler, more direct language which reflects the definitions of family violence and explains the implications of the order more clearly (perhaps with examples)*.

Good Individuals, Not-So-Good System

A key factor that affected the participants' feelings about how the legislation was working was the specific individuals involved in the matter. For instance, LE#7 discussed how different magistrates interpreted the statutes differently:

> however, the problems being experienced currently around the interpretation and implementation of the laws will not necessarily be addressed by simply expanding the definition of FV. The problem remains that the way the Courts are implementing the current laws appears to be subjective, based on how the presiding Judge/Magistrate interprets those laws and how sympathetic/ understanding they are about the impacts of such abuse, particularly when it is, or has been, sustained over a long period. By way of example, Magistrate [X] saw the impacts of coercive control, even though it was not given that tag during my hearing…[and] ruled that the abusive behaviour of the respondent, even when directed at my wife, has an impact on me. However, Magistrate [Y] refused to consider the ongoing attacks the perpetrator was inflicting on me personally via the Family Court proceedings, stating that any matters of family violence directed at me through that jurisdiction should be handled there.

LE#5 found some Legal Aid staff 'very helpful because [they] said they'd try to sort of help as much as they could'. Both LE#1 and LE#2 mentioned the refuge workers where they had stayed as being supportive and several participants mentioned DVCS:

> Well, DVCS were really good because I was very in contact with them so they kind of, they were very helpful in that area because they're the first people, person I rang when the relationship broke up, so they were very good (LE#5).

Varying Experiences of Feeling Protected

Positive aspects in response to questions about feeling protected included that the process had generally improved following the introduction of the Act, with more protection now being available. LE#1 had sought assistance under both the 2008 Act and current Act and found:

> but then the one that I reported to the police was 2009….what happened was there's... nothing actually happened, he's still around, and I was at Doris, and so kind of scared and I had a baby and I was pregnant at the time. Nothing's happened. But then it happened again…[and] then I stay[ed] again in here. He's still outside there. Only get good behaviour bond. But then, in 2017, when the incident happened, the police straight away took him under arrest for a few months, I think, and he have to go through the courts up and down…actually I was sceptical before to report it to the police because... well, then, like, before anyway, he will be outside still, only in a guardhouse for one night, and then off he goes. So, it's going to be worse impact on me and the kids. But June 2017 was different*.…when the police came and I gave the evidence, wrapped it and straight away look for him, and lock him up* (LE#1).

LE#3's situation was unusual, as she did not have to apply for an interim order. The magistrate initiated a SIFVO when her ex-partner was arrested for physically assaulting her. She was advised of the existence of the SIFVO by police via phone on the day it was issued, but was not provided with a copy of it and found that:

> it took me a little while to get some information, but the special constable, who was dealing with the situation, explained that to me on the [Date], what that meant, what the terms and conditions were, that he wasn't able to come near me. So, that was good. *I felt reasonably informed what that meant and felt comfortable that he wasn't able to come to the house after being assaulted.*

Not all the participants felt better protected with an order. LE#2 described how her partner proved to be clever in working around the terms of the order and playing the system:

> There's always room for improvement, because people are very shrewd. *They would find loopholes, like my husband.* …He was holding a very reputable job. To the outside world, he was the perfect gentleman. All the nasty things were happening behind closed doors. For all intents and purposes, he was the most upstanding citizen. People like that, who have the smarts, who have an amazing brain about their shoulders, they would find loopholes. They would play the system and he is already doing that. He hasn't stopped since. *He's playing the system and he's doing a much better job at it than I am.*

LE#6 likewise explained how the perpetrator in her matter continued to perpetrate violence, through finding the cracks in the system:

> Even once the order was on, though, *it doesn't stop the control. He was able to control everything through the children, even though the drop-offs were at school. He controlled via the kids by …keeping any of their electronic items, things like that, throughout.* We were allowed to be face-to-face during drop-offs that weren't at school, so he'd use those times to get quite abusive and badgering.

LE#5, who had experience with the previous 2008 Act, also noted that the violence can persist through the children, in spite of an order:

> Well, this is where it's really hard, because if you've got kids, … you might have an order and it might protect you by the order, but they can get to you through the kids, saying in that grey area, they've actually gone and can harass you and that's where I had a problem with the one policeman. I said to him, I came to him, I said, 'My ex is harassing me. Yes, he's the father of my children. He's ringing me'. And it was up to 60-something phone calls at that stage, I said. And he's like, 'Oh, he says he just wants to talk to his kids…If my ex-partner was stopping me from seeing, talking to my kids, I'd be pissed off too'.

LE#8 discussed her concern about others' safety under the current regime, noting:

> While I was able to draw on my life experience, education and employment history to stand my ground and ultimately ensure the safety of myself and my child (at least for now), it wasn't until after she had also experienced avoidable harm. My heart goes out to those women and children who don't have the same level of access and resources to keep them safe.

LE#3 felt that, while interim orders might provide some physical safety, not enough was done for an applicant's emotional wellbeing and that her situation was worse because she had an SIFVO. Because of the nature of that order, there had been procedural issues, including that the parties did not have a return conference. She stated:

> if I had have gone and applied for a Family Violence Order, because the mechanism there is a lot clearer around the return conference process. So, I never ever had the opportunity to have a return conference through the Special Interim Family Violence Order. So, that's what I find most frustrating…*While I understand the Special Interim Family Violence Order mechanism is designed to support and assist victims to feel safe, in my case it hasn't met expectations…*Additionally, I've needed to take unplanned leave from work to accommodate the challenges around the process, which created additional stress and anxiety.

Another major problem for LE#3 was her inability to obtain a copy of this interim order from the court registry in person. Instead, she was told that it was confidential. Although she explained that she was the applicant and offered to provide identification, she was still refused. Legal Aid later obtained a copy of the SIFVO for her and that document indicated that the matter had been adjourned to [Date]. She explained:

> So, I engaged with DVCS again…Decided to engage with Legal Aid the next day… They advised me to seek a copy of the order to understand when the return conference would be, what the next steps were, all of those sorts of good things. So, my now ex-husband was also charged in relation to the offences. So, I went to Legal Aid. They said, 'Pop down to the counter and grab a copy of the order'. Great. I went down to the counter: 'You can't have that. That's confidential'. 'I understand it's in place to protect me'. 'No, that's confidential'. 'OK'. So, still feeling completely overwhelmed, having been physically assaulted two days earlier, I returned to Legal Aid where [X] was brilliant. She got on the phone and rang the Protection Unit and ended up

> speaking to the team leader and managed to get a copy of the order emailed to her. To date, that is the only reason that I actually have a copy of the order. So, I suppose, that's my first issue with the system… the perpetrator has a copy of the order served on them, [but] how do I get a copy to actually understand the terms and conditions and my obligations to comply with that order through the system?

LE#7 did not feel protected when his application for an extension of up to two more years upon expiry of the FVO was dismissed. This was despite the legislation, which LE#7 quoted, stating that the 'Magistrates Court must, on application, amend a final order (the original order) by extending it for a stated period unless satisfied that a protection order is no longer necessary to protect the protected person from family violence by the respondent'.[59] However, the magistrate interpreted this to mean that, given the double negative, the burden of proof falls upon the applicant. LE#7 explained:

> Despite a detailed argument from my solicitor that clearly indicated an ongoing, high-level of animosity demonstrated towards me by the respondent, His Honour refused my application, noting that the legislation 'contains essentially a double negative and that double negative is "unless satisfied that the protection order is no longer necessary", so the negative is "unless" and, of course, "no". I read that the onus upon the applicant is to prove that it is not no longer necessary to protect the protected person from family violence by the respondent'.

This decision left him feeling 'unprotected from a respondent whose previous harassment and threats had been sustained and included a number of false reports, some of which could have placed my career in jeopardy'. In addition, in his response to the draft report, LE#7 advised that the most significant impacts had been on his grandchildren, as 'FV has affected them in ways that the Courts and others do not seem to appreciate'. Insightfully, he added:

> I have witnessed the reluctance that victims of abuse have when it comes to prosecuting their partners. Despite everything our daughter knows about FV and the advice that she gives to others who are experiencing abuse, she continues to hesitate when it comes to pressing charges. Perhaps the most significant inhibitor to action is the impact that bringing criminal charges against their father would have on the children, particularly because of the very real possibility that any charges would not result in a change to the current custody arrangements. This would allow him to use her part in having him arrested and charged to influence the children. …something needs to be done to address the fears and concerns of the victims of FV and to ensure that something is done to prevent multiple women experiencing the same type of abuse from a single perpetrator.

Safety Issues

Waiting for Order to be Served

Some participants spoke of the protection-related issues caused by the requirement to have the order served on the respondent before it could take effect. Applicants could be left without protection while service was attempted; for some, this might be several weeks:

[59] *Family Violence Act 2016* (ACT) s 86(1).

> once I'd gotten the interim order approved, prior to it being served on him, due to the fact that he had firearms and the firearms branch alerted him to the order that was pending [He was ordered to surrender his firearms licence and firearms] … but *the order hadn't been given to him yet, so then he increased his threats and followed me around, basically, stating to me that the order hasn't been served on him, so he's not under those rules yet.* So, I actually had to leave the state with the kids and I had to ring the police on a daily basis and it took two weeks of living under that constant badgering of him until it was actually finally served on him (LE #6).

> My husband… was making himself unavailable for the Order to be delivered. And then that took a lot longer, the whole process….at the time, he was working for [X]. *Police knew where he was, police knew where he stays, but it wasn't easy.* I had to call the service desk every other day to get it expedited, for me to get this served, because he was waiting outside the schools.… *And knowing that this order is not there to protect me and the kids, he came to my workplace several times.* If not for the refuge, where we had this amazing security, me and the kids would have been exposed to a lot more. …*It took me at least six weeks [to have him served]. It's not for lack of trying. They tried, but he had a way of disappearing on them* (LE#2).

Duration of Orders

Most of the participants described interim orders as normally lasting for 28 days. LE#1 believed that interim orders needed to be longer. As she described it,

> For migrants like me, who have no family and no one, interim orders should be able... [to be] longer, and especially having kids, we have to do a lot of things also. Exhaustion and trauma and everything, you know? So that's making it hard sometimes…The judge can ask us [to provide evidence]. *Maybe we are not ready. We're still traumatised, we're still scared. Especially the one who have children, you know?* It's the exhaustions as well and no other support but the refuge, who support us, which is limited… They have the limit what they can help and what they can't help, and no other support, you know?

LE#6 would also have preferred for the order to be in place for longer:

> I wasn't allowed to take a longer one than 12 months. I would have preferred to probably had a two-year one, but they don't take them out for any longer than 12 months. And then I ran into the issue of, if I had have extended that 12-month one or placed a new one on any time from basically, even now, he actually loses his job. So, the controlling behaviours are still there.

LE#4, a transgender woman going through gender affirmation, was the respondent on an order, which was active for six weeks before being withdrawn by the applicant, who was her former partner:

> The duration of the orders for me, six weeks was enough time…[for X] to change all the locks and make up her mind she didn't want me to come back. Maybe if we'd had a mediation prior to that, closer to the date we might've been able to resolve things.

LE#4 felt that the system was unfairly weighted against respondents and her former partner had used the system as a form of violence against her:

> I'm looking back at that now, saying that it was caused by that, because I didn't have a voice. I know other respondents can be violent about their orders. *When someone is passive, like I am, I felt the order was terrible. I've never had anything like that in my life. So, I didn't get the opportunity, in the short term, to respond to the order.*

For LE#3, it only became clear after the fact that the SIFVO imposed on her former partner was just in place while criminal charges against him were being finalised. When LE#3 belatedly learned that the order was no longer active, she successfully applied for an FVO and was able 'to obtain final orders for two years after him and his lawyer tried to get me to agree to an adjournment for three months, so that he could prove he's a better man'.

Children Not Included on Order

Several participants felt that their children were not adequately protected by an FVO. LE#1 was advised that, without evidence, obtaining an order with the children listed would be problematic:

> No, something's happened, actually. I'm so, so upset. …because they want to take the kids out from the order. …They forced me. Even the registrant [sic], just to make it finish quick. You know? And he kept trying to convince me, 'It's not relevant. It's not relevant'. Yeah, but he threatened the kids! …He threatened... 'But there's no proof!' What do you mean, no proof?

Omission of her children from the order was also the case for LE#3, who applied for an interim FVO after realising belatedly that the SIFVO had lapsed:

> So, I went back to court the next morning, was granted an Interim Family Violence Order. But I could only be on that order because *my sons, being [ages] couldn't apply for it. I couldn't apply for it on their behalf*. …they couldn't come with me that day…So, again, there was a longer period of time that they were left exposed. In the meantime, he had sent them both a text message…straight after his sentencing, which they both ignored.…
>
> My sons went in for theirs, and they weren't granted an interim order because they're shy, they don't understand the system. They weren't able to argue their case. *The registrar just didn't feel that there was enough evidence there to support it.* They hadn't been physically assaulted, even though one son actually had, enough for me to have called the police back then. But it wasn't deemed to be strong enough.

She noted that, because her sons were not able to get an interim order, 'they ended up having to agree to undertakings for 12 months, [that] was the best that they could do with the Deputy Registrar or the Registrar'.

LE#7 likewise felt that the emphasis on undertakings was unhelpful:

> My family is now of the opinion that my daughter should have ignored the advice of solicitors and continued to press for orders, rather than undertakings, and included the children in her application. We now feel that the fact that she accepted undertakings back in 2014 and (reluctantly) excluded the children

> from her application meant that the seriousness of the situation for the children was not exposed early in the Family Court process and may have contributed to the judge downplaying the abuse and its effects on the children.

LE#8 was also dissuaded from trying to include her child in the FVO:

> My primary concern with the FVO process and application is in relation to coverage – or lack of – in their operation for children. While the legal definition of family violence now extends to include children witnessing violence, in practice, this appears to be given little weight in the system. I was advised against including my daughter on my application by the Legal Aid lawyer, as 'magistrates don't like to see children on the application', 'it will be easier to have it agreed if your daughter isn't on it'. This advice mirrored an earlier direct experience I had had with an ACT magistrate so I (reluctantly) agreed to leave her off.

Feeling Blamed for Children's Situation

Several participants felt they were blamed if they tried to protect their children or for their lack of safety. For instance, LE#1 commented: 'That's the thing…you don't want to look bad in front of the Family Court. So, I'm the bad [one], now. *Trying to protect my children, I'm the bad, [one] now*'. For LE#6, the mandatory reporting requirements backfired, with her being reprimanded for not protecting the children adequately:

> In the beginning, I rang DVCS and I got onto their books. I rang them for help in regards to one incident that happened with my son, where he picked my son up by the ear and held him against the wall by his throat. They did a mandatory reporting, which was issued through CYPS, but CYPS came down on me and my ex never got a call at all. They never ever spoke to him. *But I was told I could lose the children, because I didn't act in a protective manner. So, I pretty much got punished for his actions*. … I stopped talking to them from there on, basically and that's when I got in touch with Legal Aid and got them to write to CYPS.

She explained how the perpetrator was never held to account for his behaviour anywhere in the system. In fact, she was the only one who was accountable:

> [it's] horrendous that he gets away. Basically, this whole thing, the only person who's ever been held accountable is me, for everything that's gone on. He's never been held accountable yet. Even by the Family Violence Order, he still thinks it's a joke and anyone can just get them, yeah. So, it's a little bit frustrating to think that really, the only person who suffers is the victim.

Breaches

One participant described feeling that the order offered her some protection, with the judge being co-operative when the respondent committed a breach:

> Because of the interim order, there is action be done.... he breached, and the judge co-operated straight away and then he have to prove it after that, if he is in the right or in the wrong. You know what I mean? *But the interim order is really there to protect us* (LE#1).

Another woman also experienced the breach of an interim order. As with LE#1, action was taken against the respondent. However, this respondent continued to breach the order and police were limited in their options against him:

> He was in custody for one-and-a-half days I believe. He was released on good behaviour bond... But the parcel [was sent] during that time and all he had to say was, it wasn't him who posted it and nobody could trace it back to him…. Police knew, but they couldn't do anything about it…. he was taken into custody, was released after a couple of hours, because *at the end of the day, it was my word against his, and I sort of had a gut feeling that [was] where I was heading, because he is a very smart person. He wouldn't implicate himself.* I knew all he had to do was say that it wasn't him. The police knew, the legal officers knew, we knew, but *nobody could do anything about it*, because he said it wasn't him and it wasn't his handwriting on the parcel post (LE #2).

For LE#3, there was ambiguity or lack of knowledge about whether the SIFVO had lapsed. The criminal charges had been dealt with by a guilty plea, but her ex-husband made contact with her within days of sentencing:

> DVCS actually let me know what the outcome of that was, because they were case-tracking for me... I checked with them. I said, 'so, as far as you know, the FVO's still in place?' 'Yeah, yeah, there's no reason that would have been lifted'. So, I sent out a message to close family and friends, and not long after [X] came back to me and said, 'He seems to think the FVO is lifted'....
>
> So, I rang the police and I said, 'Can you just check in the system and tell me whether this FVO is in place?' And they said, 'Yeah, in the system it's in place'. So, I went, 'OK. Fine'.
>
> So, at this stage I was now home on my own. So, I was trying to push it to the back of my mind, but I started to feel really uncomfortable. So, in the end I made the decision to call the police, because I felt, well, both actions are clearly contrary to the terms and conditions of the Family Violence Order. My initial reaction was to ask the police just to contact him and tell him to back off. But the police said, 'Well, it's all or nothing. You're either making this breach complaint or you're not'. So, I said, 'OK, I'm making the breach complaint'.
>
> So, they sent two officers around. They collected all the evidence…They left to go and arrest him. They called me the next evening, the constable who'd come along, and he said, **'**Look, we didn't arrest him. When we got there, he pulled out the order, which actually says that it remains in place until all related charges are finalised. And so, the charges were finalised … when he was sentenced. So, due to the ambiguity of that, we didn't arrest him'. And I said, 'But, you guys told me that when you checked last night, that it's still active in your system'. And he said, 'I know, but when I spoke to my senior superior officer…*it's too ambiguous. So, we made the decision not to arrest him'.*

LE#7 found the police to be supportive in relation to breaches, unlike Legal Aid or family law solicitors:

> More recently, we have received advice from a Legal Aid solicitor suggesting that my daughter should just accept the fact that her ex-husband never agrees with anything she suggests and that the breaches…were minor and were basically not worth pursuing. This is contrary to the advice of ACT Policing, who say that any breach should be pursued, regardless of how minor it may *seem.* My daughter, like many victims, is already reluctant to pursue these breaches through the courts. However, advice of the type she has been given by Legal Aid, combined with the solicitor's statements claiming that he is just telling her how the court will interpret the situation, serve only to ensure that these types of FV incidents will continue to be under-reported and too many will be ignored until they escalate into a much more serious breach.

However, LE#7 also noted:

> Assault and abuse perpetrated under the FV Act seems to be treated as a lesser type of violent crime, which means that there's little incentive for people like my former son-in-law to change his behaviour. Action by the police seems to be the one thing that he is genuinely concerned about, yet he has never been charged with a criminal offence, despite a long list of FV findings in both the ACT Magistrates Court and the Federal Circuit Court.

Adequacy of Communication and Continuity of Care

Several participants identified a distinct lack of communication, deficit of information provided to them by those working in the criminal justice system and/or poor continuity of care during their interactions with the FV scheme. For example, LE#1 was not informed that her order had expired and received no warning from any agency when the perpetrator was released from custody. LE#2 felt that, in her case, the continuity of care broke down with the police:

> They're all saying one thing and I take all that information to the police and they have a totally different view of the same topic and something we believe that's very concerning, it wasn't when it comes to presenting all that to the police and they would say things like, 'OK, yes, I can see that he tried to get in touch with you, but it's about [the] kids' welfare'. And the surrounding circumstances doesn't really matter at times *and they don't seem to get the clear, full picture*.

LE#3, whose ex-partner received a SIFVO, explained how poor communication led to her being informed that she had a return conference when in fact, the respondent was entering a plea for the criminal case that day:

> I was all prepared. I had a good friend come with me to court. [X] from DVCS was there to support me as well**.** I went to the counter to check in after seeing my ex-husband across the room and feeling sick to the stomach, feeling like I was going to throw up. I checked in at the counter, to be told my case wasn't listed. So, that threw me quite significantly. I said, 'What do you mean?' And they said, 'There's no return conference listed for you today'. So, I went straight to Legal Aid and I actually had to walk past my ex-husband. He needed to enter a plea that day. So, he was in court for that process. And so, yeah, *that whole thing made me feel sick.*

LE#3 found that, although the Act had been in place for some time, criminal justice and FV service workers did not seem to have a good knowledge of these orders:

> *No one understood what was happening, basically.* So, I'd taken a day off work, psyched myself up completely to go through this whole process, and as it turned out, I didn't even need to be there.

She only learned that the order had been lifted four months after the respondent was sentenced. As she noted,

> to this date, I still don't understand why there was no contact at any point to actually say, 'What do you think? Do you feel safe? Should this order remain in place? What are your wishes here?' And I don't even know if it was the magistrate, or if it's a procedural thing, who lifted the order...The Special Interim Family Violence Order, to my mind, the process should have been clearer that it shouldn't have been lifted, or we should have been consulted. We should have known what was happening throughout that process to have felt empowered to know and have that coverage.

The way she learnt that she was no longer covered by the SIFVO was also disturbing for her. She had applied for an FVO, which had been made final after receiving advice from the Court Protection Unit that the SIFVO was indeed no longer effective. Because of this, when she received an email from police, forwarded on from the Court Protection Unit, advising her that the SIFVO was dismissed, she assumed that it was referring to the FVO that was currently protecting her. It was only after contacting the police again that she understood it referred to the SIFVO and that she was still protected by her own FVO:

> Out of the blue, I just received an email from the ACT Police in Family Violence Coordination Unit, which was forwarded on from the Court Protection Unit to advise me that FVO [X] had been dismissed. The subject line included FVO and my surname, 'Dismissed'. So, when I saw that, it sent me into an immediate panic, given everything that had just happened to me. I know I was at work and I just felt sick to the stomach. I had the sweats. I went cold. [Then] I realised it was in relation to the original Special Interim Family Violence Order, not my current Family Violence Order.

By contrast, LE#5 was positive in her assessment of the communication she received from police in her application for FVOs under the 2008 Act:

> Well, I thought the police were quite good in … those incidences, because they did ring me, they said they were going to ring me, they did ring me. I mean, I might have had to ring them once or twice for them to ring me, but they were pretty good about... I didn't want to harass them, but they did actually get back to me about the outcome. They didn't sort of leave me sort of wondering whether he, what was going on.

However, other interactions she had were not as positive; this included receiving conflicting advice about whether she could extend the order. The experience had a negative impact on LE#5, as she was asked to go over her experiences, but then was told there was not enough evidence to support another order:

> I was trying to get it extended, but there was a bit of a confusion about, yes I can extend it, no I can't extend it. And it was just, it was very, very, very frustrating because one person said, yes, I could and the next person I saw, they said, no, you couldn't...but … at the end of the day it's really up to the magistrate… depending on the magistrate and, basically, they don't extend orders past the first one, the first one being extended. They very rarely extend it after that.

She found, though, that DVCS did support her with the police:

> I mean, they're obviously limited to what they can do, because if they got a crisis visit, they have to go to the crisis visit, but if they can talk to you they will. So, they were very good and they are very good because they can come with you to the police station if you feel like you not being heard. Which I didn't know about until after I told them about the incidents with the police. I didn't feel I was getting heard by the police and they said, 'Well, next time give us a call, we'll come with you if we can'.

LE#7 discussed the issues concerning information that may arise with staff changes:

> We have found that changing case managers at any agency…results in much of the background and understanding that has been developed over time being completely lost. *When staff move on or otherwise become unavailable, the victim has the frustrating and emotionally exhausting task of 're-educating' the new case-worker of the detail of the abuse and why such an innocent-looking email or text is such a big deal.* Recording of the details of each encounter with the counsellor or support person is generally limited and cannot convey the full depth of emotion and trauma, or the broad range of abuse, that the victim(s) have experienced.

However, LE#7 was keen to emphasise the support received from DVCS and the Legal Aid Family Violence Unit.

Information Sharing and Inter-agency Co-operation

Again, there were differences in how those with lived experience perceived the communication across different FV services and criminal justice agencies. One participant felt that, although various women's organisations work together well, the police were not as co-operative:

> I was supported to go to these return conferences and [family dispute resolutions]. Luckily, I work in the community sector and I knew where to go and ask for help for case management and support to be in these places and what documents I need to collect and all that. That's something I've noticed, they usually check with me if it's OK for them to get in touch with all these other agencies that I am involved in. And unless I give them permission, they wouldn't. But since I was OK with it, I've noticed there's that coordination between them all these organisations, especially Doris and some other women's services and Legal Aid. But there is this big gap when it comes to linking all that information to police. I felt a lot of help at times, but resistance as well (LE#2).

LE#3 agreed that DVCS and Legal Aid were quite well-linked:

> And one of the things that I suppose arose out of my case, so Legal Aid were talking about, 'Oh, yes. Yes, we'll talk. So, we have a regular catch-up with courts and with the Protection Unit', and that sort of thing. But I haven't had any feedback on whether [the issue with LE#3's SIFVO] was raised, what the outcome was or any of that. And maybe there is no feedback loop to come back to me. So, I don't know the outcome.

LE#3 also witnessed a lack of inter-agency communication and co-operation more generally:

> when the dismissal email came through, so when I spoke to the police officer, he shared frustration around the lack of information they get back from the magistrate when the Special Interim Family Violence Order is issued. And when I spoke to [X] at the Protection Unit, [X] shared the same frustration, saying, 'We don't get any information about you'. Well, [X] was lovely, right, and wanted to help…my experience is individual people are absolutely brilliant, and they want to help, and they want to do the right thing, and I feel like the system is letting them down…The system's broken. They need to work out a better way to actually manage it. And just throwing your hands up in the air saying, 'Well, I don't have your details', that's not an appropriate way to manage it…They need to completely overhaul it and make sure that the communication is fixed between the different services. And they need to work out, 'OK, how does this actually look?'

For LE#6, there was little communication between DVCS and Legal Aid. Importantly, she felt that, if there had been more co-operation and communication between agencies, it may have helped her to recognise and seek assistance for DV earlier:

> *There was no speaking to each other…*I think it's more to do with, not that I'm having to tell my story over and over again, but it's the parts where... It took me a long time to realise I was under domestic violence, and it wasn't until I was out of the relationship that I realised what I was living. So, it would help with the agencies are talking to each other in the fact that they can highlight that 'no, that behaviour is not acceptable', and they can point things out to you that you don't really see, that you think, 'Oh no, that's OK'. Like, some of his behaviours now even, *it'd be helpful if the services are talking, [so] that they can sort of have that same message coming across going, 'No, you do have rights here',* where I think I may not have rights because I don't know. Because *you don't know what you don't know*.

LE#6 found that DVCS and CYPS worked well together though to help her to create a parenting plan, but she still she felt that there was not enough information shared across agencies. This was an issue particularly in relation to her children and the help they received to deal with the aftermath of the FV:

> I think there should be more, like when my kids... My eldest son's now in high school, but when he was in primary school, I don't think the school actually reported enough. They knew what was going on. They watched my son's behaviours, they put him on behavioural plans, they could see that it wasn't right. They could also [see] that I wasn't right. No reports were ever done nor sent across to CYPS. The first they'd heard of it was the DVCS reporting, which is why I think the CYPS pulled me up on it mainly.

LE#6 went on to say that her son had received better support in high school and 'gone in to counselling just recently and we haven't had to sign anything', pointing to a more positive recent outcome, but also different practices across the education system. Two other participants (#LE1 and #LE7) found a general lack of continuity and co-operation across all the relevant organisations.

For LE#3, the issue was ongoing. Following instructions on the Court website, she had lodged a formal complaint about the handling of her case. She received a delayed response, which was not helpful:

> I prepared the complaint/feedback. I'm trying to frame it a little bit more positively than being a complaint, but I guess that's what it is…. so their policy actually stipulates that I'll receive … an acknowledgement within five days to let me know who the person will be who will be actually managing the feedback/complaint, and a response within 21 days…..So, I sent that on the [X], and I've had radio silence since submitting that… If there's broader systemic issues, they need to be fixed. Fix them. But the fact that they can't even abide by their own policy around complaints and feedback [raises] massive alarm bells.

Cultural Issues

Despite our efforts to recruit Aboriginal and Torres Strait Islander people with lived experience of FV for the study, there were no such participants in the cohort. In its response to the draft report, an Aboriginal and Torres Strait Islander-led organisation advised that they were disappointed in the low numbers of Aboriginal and Torres Strait Islander peoples interviewed in the review and felt that the review does not reflect their experiences or the diversity of Aboriginal and Torres Strait Islander cultures. We understand this concern and suggest that further research on these issues be undertaken by Aboriginal and Torres Strait Islander researchers.

Two of the lived experience participants were immigrants, one of whom felt her unique cultural needs were taken into account. She also described how she felt fortunate that there were some other culturally diverse people working in women services and/or in the criminal justice system:

> All the organisations I was involved with, even before I go into all the details, they are very respectful where I come from. Nobody was judging me for staying 13 years with this man. They realised that culture and all that played a big part in that. If anything, they were very respectful and understanding. And they knew the… extra challenges for somebody who is coming from a culturally and linguistically different country. Something I've noticed, *even the staff, they are from different cultural backgrounds themselves and that's their strength.* Legal Aid too, to some extent. Because the few people I've worked with, they were very sensitive to all this and where I come from and DVCS and Doris and all the other organisations I was involved with, I got help through child and family centres, and the place I work for. *They were very sensitive to all those differences* (LE#2).

By contrast, the other migrant woman (LE#1) did not believe that culturally specific services were available for her as a Muslim woman from a Muslim country alone in Australia with children. She did not feel assured that people in any community or government service would have the sensitivity to understand that her cultural norms. Instead, they treated her like 'I'm some Aussie'. She added:

> as I mentioned earlier about the people who especially come from another country and other cultures, I find it's difficult, and sometimes, yes, you need help from another leader from another culture, but sometimes it can be like Catch-22. It can be a boomerang, you know? Because sometimes they're going to defend the men and it's going to be very difficult for the woman who lived [with FV to be] protected by [the system].

LE#3 also recognised the need for more culturally-specific services:

> the fact that I feel that there was a complete lack of communication and an inability to actually navigate the system, *I can only imagine how people with different backgrounds, how more at sea they would actually feel around this?* So, imagine someone from a non-English speaking background, or someone with less education...someone who's socially isolated, all of those sorts of things, *how would they even start to actually deal with this and navigate the system?*

Summary

The eight people with lived experiences of the ACT's FV legislation had mixed views about the legislation and associated processes and agencies. There was an emphasis upon the negative aspects of what they had experienced, which is understandable, as those wanting to effect change were likely to be more inclined to participate in this research project. Their views are important, as they point to an array of issues that could be addressed and/or improved. These issues and themes will be discussed in further detail in the following chapters and include: issues about the current definition of FV under the Act; difficulties in the application process; variation in the competency and knowledge of staff and problems with personnel transiency; the variety of ways that FV perpetrators may continue to exert control; the need for applicants to have more protection for themselves and their children; the difficulties that may result from a collision between FV and family law orders (discussed further in the following chapter), including survivors feeling blamed for their children's lack of safety; a dearth of knowledge about SIFVOs; possible problems deriving from the duration of orders and the response to breaches; deficiencies in information and inadequate continuity in services for applicants; lack of adequate communication between relevant agencies; and specific cultural needs not being uniformly recognised or adequately supported.

7. Discussion and Stakeholders' Suggestions

This chapter presents our discussion against the backdrop of the Standing Committee's recommendations. It also includes numerous suggestions from professional stakeholder and lived experience participants. As these people are at the FV coalface in the ACT, their suggestions come from an experiential space and should be listened to accordingly.

The Standing Committee Report

Stakeholders' Comments Relevant to the Standing Committee's Recommendations

Shortly before we commenced these consultations, the ACT Government requested that, in analysing the consultation data and developing our report, we identify any support and/or commentary on issues related to the Standing Committee's *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses*.[60] We were specifically referred to the recommendations[61] and discuss below those where our consultations yielded relevant information. The ACT Government tabled its response to the Standing Committee's report in December 2019, after we had completed our consultations. In relation to each of the recommendations to which we were referred, the Government stated, *inter alia*, that the issue had been referred to us to consider in the present review and any recommendations that arise from our review will be considered for future policy development.

- Recommendation 37: in the development of DFV policies, it should be clear that the choice to leave is one option and that for those who prefer another option and not to leave is another distinct and supported option for families where it is safe to do so.

The ACT Government agreed with this recommendation. There was no explicit reference to this issue in our consultations, but it appeared to be assumed by at least some stakeholders that not leaving is a legitimate option. No stakeholders made statements to the effect of 'she should just leave' or otherwise gave any indication that they did not support the choices of FV victims.

- Recommendation 38: The Committee recommends that a non-police option should be available and that this option be developed and supported out of respect for those who prefer to seek an alternative.

The Government agreed with this recommendation and indicated its commitment to providing non-police options for people experiencing DFV, via the Family Safety Hub and the Room4Change program. It was noted that issue had been referred to this review and any recommendations that arise from the review will be considered for future policy development.

In line with our previous observation, we also found that numerous participants identified the importance of respecting the choices made by people experiencing FV. However, FVW#2 made the following comment about the FV sector in the ACT:

> The area has no leadership, is completely fragmented, has not a single point of representation, remains actually seized by selected few who are organised in closed groups of associates/friends/insiders, including in government. The ACT's Safer Families office, regardless of what seems to have been a huge and

[60] See Standing Committee on Justice and Community Safety, *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses* (2019).
[61] Ibid Recommendations 37, 38, 39, 43, 44, 46, 48, 51, 52, 54 and 55.

> heavy financial investment in employment of private 'consultants' for months and months without end, learning from us frontline workers all of what we already know, to place on paper, under the disguise of 'participation', 'consultation', etc and etc.

- Recommendation 39: police should be able to issue 'on-the-spot' protection orders as is currently possible in Tasmania, which can help while waiting for an FVO to be issued.

In its response, the Government noted this recommendation and stated:

> ACT Police can already seek after-hours orders from the duty magistrate, which may have the same effect as an 'on-the-spot' protection order.
>
> The After-Hours Family Violence Order (AHFVO) framework has improved the protections afforded to victims of domestic and family violence. These protections may be further increased through a system of police-issued Family Violence Safety Notices (FVSNs) that serve as a summons and application for an interim Family Violence Order (FVO).[62]

We found mixed opinions on this issue. JUST#1 summarised many arguments provided in favour:

> Where legislative provisions allow for FVSNs to act as an application and summons for an FVO, barriers and administrative burdens are reduced, maximising the protections available to victims. *Such an FVSN framework would reduce the need for unnecessary recount of traumatic details, provide continuous coverage of judicial protections, and ensure that all FVSNs are subject to judicial oversight at an application hearing…*where consent of the applicant is obtained, it would be preferable for all FVSNs to proceed to court for conversion into an interim FVO. This approach would provide benefits to FV victims, however would also likely have resource implications for police, courts and other agencies.

JUST#1 also noted that the introduction of PISNs would bring the ACT into line with the other jurisdictions in Australia and could replace after-hours orders. A number of FV workers in the women's sector agreed that victim safety could be improved with these police-initiated orders.

However, as we saw in Chapter 5, the majority of professional stakeholders were opposed to giving the police this added power. Some of those not in favour were concerned that police lacked proper training about the nuances of FV, while others felt there would be redundancy with the after-hours regime or were concerned that police would use these notices as a mechanism to avoid applying criminal charges.

Notwithstanding the desirability of promoting inter-jurisdictional harmony, we do not find strong support for adopting this model. However, we note the concern expressed about the operation of after-hours orders, with professional participants almost entirely in consensus that these orders were not effectively protecting FV victims. Concerns were raised about their limited use, the higher burden of proof, inflexibility about when they can be issued and lack of information about expiry dates.

[62] Legislative Assembly for the ACT, *Government Response to the Report on the Inquiry Into Domestic and Family Violence – Policy Approach and Responses* (2019) 23.

- Recommendation 43: access to low-cost legal representation be publicised or made available through DFV support and resources services as an alternative to the use of legal aid services.

The ACT Government noted this recommendation.

In this review, several stakeholders made reference to the cost of legal proceedings, especially in the context of family law proceedings. The following comments highlight the implications of the cost of legal representation on children's (and women's) safety. FVW#2 had observed women being pressured by solicitors *'paid by public funds* to disregard children as victims of violence and, further, to disregard women's experiences of violence':

> The purpose has always been for women to agree to remove children from their FVOs under the premise that the Family Court will consider that women are not willing to give access to children by the perpetrator of violence against them and their children, if they do not demonstrate to be flexible by insisting that their children remain included in their FVOs. *I have even heard that solicitors have made veiled threats to women on this matter, suggesting that they would not be granted free legal representation otherwise*, as Legal Aid ACT would consider that they are making their case become complex, that they are not considering the benefits to their children to have contact with their fathers, basically that they are the 'problem'.

Especially in light of the issues with the family law processes discussed below, our findings support the Standing Committee's recommendation.

Legal Aid ACT provided the following response to the comments made by FVW#2:

> From its own experience of the approach taken by courts when applications for interim orders include children, Legal Aid ACT is acutely aware of the tension that can arise between the 'least restrictive principle' in the Act and the inclusion of children on interim orders made *ex parte*. The comments by FVW#2 carry the clear imputation that Legal Aid ACT is not giving appropriate advice or is acting unprofessionally, and other services would be giving different advice in the circumstances. Legal Aid ACT is firmly of the view that any competent legal service would provide the same advice to people seeking family violence orders. It is Legal Aid ACT's policy to advocate in court for an applicant to include children on an order where the applicant seeks that order, and wherever there is an argument to be made to have the children on the order.

- Recommendation 46: in systems development, acknowledge and adopt case management and ongoing support to those experiencing abuse via the legal system.

This recommendation was noted, with the following comments:

> The ACT Government acknowledges that the criminal justice system can compound the trauma experienced by domestic and family violence victims. The ACT Government is committed to introducing a Charter for Rights for Victims of Crime to ensure that victims have a clear understanding of their rights, are treated with respect and consistently in their interactions with the criminal justice system, and have access to complaints resolution and remedy if their rights are breached.

> Where there is a criminal offence before the courts, the needs of victims of domestic and family violence in the ACT are considered and discussed via weekly case-tracking meetings with multiple agencies through the Family Violence Intervention Program (FVIP). The FVIP provides an interagency response that includes ACT Policing, Child and Youth Protective Services, Victims Support, the Director of Public Prosecutions, Corrective Services and DVCS. Victim Support also provides case coordination for domestic and family violence victims, including access to specialist trauma counselling services and a range of advice and assistance that includes safety planning, support navigating government services, court support and linking the victim to other appropriate community-based supports. Victims Support also administers financial assistance to eligible domestic and family violence victims.[63]

The need for improvement in this regard emerged as a key theme from our consultations and support the Standing Committee's recommendation. LE#3's experience of an SIFVO exemplifies the lack of both case management and information. In addition to being wrongly denied a copy of the SIFVO and not provided with an opportunity to express her views in regards to the order, she was not informed that the impending court date notified on the SIFVO had been adjourned and, most seriously, she was unknowingly left without protection, when the SIFVO ceased to be effective. As a result, she was exposed to further contact from the respondent to the order, which increased her risk of harm and severely impacted on her emotional and mental health. Other participants also experienced a lack of continuity of care, along with gaps in communication and/or information and commented on the variation in the competency and knowledge of staff and problems with personnel transiency. As LE#7, observed, 'the level and effectiveness of the service is often based on the personality, efficiency and drive of the person delivering the service'.

- Recommendation 48: the ACT Government assess service of FVOs to ensure appropriate timeliness.

The Government agreed in principle with this recommendation and stated:

> All court issued orders, including Family Violence Orders (FVOs), are served by ACT Policing's Service and Process Team who are a centralised team. While any sworn policing member can serve an order, the majority are served by members of this team.
>
> The importance of timely service of FVOs is recognised and built into the service framework within ACT Policing. Service of FVOs is prioritised over any other service document to ensure they are served as promptly as possible. The Service and Process Team work with the Director of Public Prosecutions, Legal Aid and the Domestic Violence Crisis Service to ensure that any order requiring urgent service is identified early and quickly for expedited service. Through the Police Real-time Online Reporting System (PROMIS) all policing members are alerted to active or outstanding orders which affords greater opportunities to affect promptly.
>
> Additionally, applicants are kept up to date on the progress of service. ACT Policing contact applicants by either a phone call or text message to notify them of the service and answer any questions that they may have.[64]

[63] Ibid 26.
[64] Ibid 27-28.

Unfortunately, the comments from our stakeholders do not entirely support this response. As set out in Chapter 5, several participants mentioned feeling unprotected, as the service of their orders was delayed. This was echoed by some working in the FV sector, who confirmed that service can be problematic and leave family members feeling unsafe:

> The service and processing team ... we've seen a fluctuation around staffing levels, which has affected the effectiveness of the orders, because …*some of the orders are being delayed by days or weeks* (FVW#1).

> We've had situations where an interim order was in place and the person evaded service for over a year, even though police knew where he was – and actually, just at the one year mark, she had to discontinue her order, because it hadn't been served. So, the legislation says an interim order can't be in place for longer than a year. So, for her, even though she felt she had these protection of, 'Well, once that he is served, I'll have safety', at the one year mark, it was, 'You've got to cancel it and reapply under new grounds' (FVW#6).

FVW#3 suggested that substituted service be permitted, for example, 'serve it on someone's mum. We're satisfied that mum will notify them, it should be in place', while FVW#6 called for service by text message. We endorse the Standing Committee's recommendation and suggest the need for practical responses to ensure expeditious service of orders.

- Recommendation 54: the ACT Government extend provisions to allow for cross-examination of witnesses in DFV matters in accordance with changes that have been made in court procedures in relation to sexual assault matters to allow video link evidence and using a statement taken at the time of reporting a DFV incident.

The Government agreed with this and referred to amendments to the *Evidence (Miscellaneous Provisions) Act 1991*, which extended the availability of special measures to a broader class of witnesses and allowed for the use of FV Evidence in Chief Interviews, which were said to address this recommendation.

Our participants were not asked directly about this issue, although JUST#17 described it as 'problematic' in practice, despite 'see[ing] the reason for it'. We asked participants about a related issue which seeks to minimise the trauma of cross-examination on victims, namely, whether limits should be placed on cross-examination on victim impact statements. Most of the participants from all sectors were supportive of this.

We now turn to discuss the implications of our findings, some of which also relate to the Standing Committee's report.

Stakeholders' Suggestions on other Matters Raised by the Standing Committee

Issues Associated with the Federal Courts

Although the ACT Government did not make explicit reference to the Standing Committee's recommendations on issues associated with the Federal courts, they are clearly relevant to our findings. In this context, the Standing Committee recommended:

- more information sharing between the Federal Circuit Court (FCC) and CYPS to avoid a child being returned to violent parents' (Recommendation 49); and

- more cross-jurisdictional communication between the FCC and ACT Children's Court (Recommendation 50).

The complexities and inadequacies of the intersection between the ACT and Federal courts emerged as a key theme, even though there were no specific interview questions dedicated to this issue (see Appendices A and D). As LE#7 observed:

> There is a disconnect between the ACT Magistrates Court and the Federal Circuit Court (Family Court). For example, an expectation by the magistrate presiding over my FVO extension application that I would receive the protection I needed from the FCC judge hearing my daughter's case was totally unfounded. The judge did not want to hear anything from me about my FV proceedings and would not entertain an injunction to protect me from the abuses of my former son-in-law. I'm not even sure that such an injunction on behalf of someone who is not party to the proceedings is even possible under the law. Regardless, the magistrate directed that I seek redress in the FCC for any harassment I felt was being directed at me in that court, giving it no consideration in my application.

LE#7 felt his daughter was blamed by various individuals in the legal system for trying to protect her children from what she saw as ongoing violence:

> As the FCC case dragged on, the Court appointed an Independent Children's Lawyer to represent the children. This was a local ACT solicitor, who did not speak to our family and did not attempt to contact anyone who knew the children's situation, including CARHU, CYPS or Kids' Help Line, all of whom had been involved with the family. In a discussion with me at one point, the ICL stated 'I don't think he's a nice person, but I've seen a lot worse'. In an astounding statement in her written submissions, she then wrote that my daughter, after having suffered in an abusive relationship for 10 years, was living in the past and needed to move on from what happened pre-separation. She also wrote that, for my daughter, who, at the time had been trying unsuccessfully to obtain emotional support for her children, 'The children's reality of their experience was a bridge too far for the mother at this stage'. She also justified continuing shared parental responsibility by writing in her submissions that there were no DV orders in place, ignoring the fact that both my daughter and I had, at various times in the recent past, had protection orders in place. To top it all off, my daughter received criticism from the FCC judge for seeking to have the custody case reopened after learning that her children were suffering additional emotional abuse, witnessing ongoing FV between her ex and his latest partner. This attitude of the presiding judge reminds me of what Rebecca Poulson wrote in her book *Killing Love*, when she said: '*There seemed to be an unsaid censure against domestic violence victims, that they must accept some blame*'. In our case, it was also that the Court seemed to resent the fact that she had sought to reopen the case, thereby delaying final orders, which had already been too long coming.

LE#7 explained how running a family law matter may preclude being protected from FV:

> The FCC has shown little or no interest in dealing with the abuses perpetrated by my former son-in-law. While he admitted to what were described as 'very violent acts' towards my daughter in front of their children, the Court refused

> the granting of sole parental responsibility to my daughter, downplayed the seriousness of the FV and ordered an increase in the amount of time the children are in his care, stating a belief that 'children need their father'. On top of that, *the judge ordered that my daughter could not seek any type of emotional support for her children unless the father agreed to such support*. This was ordered despite the fact that, for about the last three years of the custody hearing, the father had refused to allow access to any type of emotional support service for the children.

LE#7 also noted that, while proceedings are continuing in the FCC or Family Court, 'services like CARHU, CYPS and others are unable to "get involved"'. Several other participants also shared the difficulties that they had experienced with a conflict between family law and FV orders. For example, LE#6 experienced significant difficulties in protecting her children, whose father had legal access to them through the Family Court, in spite of his violence:

> I had to apply for a family violence order against my ex. …He was still displaying quite violent behaviours towards me and in front of the children and being quite violent actually towards them as well….[I was] a little disappointed that the kids weren't able to be easily added onto it. …*I couldn't protect them. I could protect me, but I couldn't protect my children.…*because he still had access to the children and had rights to have access to the children. They weren't allowed to be added unless I was prepared to go through the family courts, which is a lengthy, expensive process.…. How is that possible that, as a victim, I can't protect my children who have been part of it? They've seen this, they've witnessed it, they've lived it.

LE#5 likewise experienced conflict between the ACT and Family Court orders:

> the police said one trumps one and the other one trumps the other one and it was very confusing and they were trying to work out whether it was a breach, whether it wasn't a breach and some people said yes it was, some people said no it wasn't and that's where some police say yes, some police say no. It's confusing for them as well and for the person trying to sort of say, 'we think this is a breach, is it a breach?' Then they go, yes we'll just ask someone else and they say no and they come back and they can't do anything.

For LE#8, the negative consequences resulting from the intersection of FVOs and family law proceedings related especially to mediation:

> the FVO then triggered a Family Court proceeding for visitation with my daughter by the FVO respondent (her father). I considered skipping the compulsory mediation, but was advised by the Legal Aid family law manager that the process was supported and may provide a pathway to a solution – and that litigation was expensive. In my experience, the mediation process is about expediency and exposes victims of family violence to further harm. *The idea that mediation, which necessarily relies on a measure of goodwill and trust, can be achieved where family violence has occurred, is fundamentally flawed.* I went through the process twice while the FVO was active. I was asked to agree to the violent perpetrator spending time with my child and I alone was required to make the relative judgements about what circumstances, behavioural interventions and other safety measures were adequate to ensure my child's safety. Absent professional advice (child psychologists, drug and alcohol

> counsellors, GPs, social workers etc), I felt ill-equipped to make these decisions, compounded by the fact that I was suffering the psychological effects of trauma caused by violence from the perpetrator. *It is a wholly unacceptable situation. Where violence has occurred, mediation in family law cases should either be given a blanket exemption or supported holistically by a team of qualified staff.*

Some of the professional stakeholders also acknowledged challenges of the kind experienced by our participants. As JUST#11 noted:

> I think the [ACT] bench is afraid of doing anything that can be done in the family law side of things. So, you see them backpedal really quickly… they're nervous about doing anything that impacts orders over in the other court or might impact orders if they're in the Family Court or there's any children involved, they are so reluctant to become involved in undermining the Family Court, which is so often not what's happening anyway. And we have a batch of children that, if mum applies to put them on the family violence order and that's refused, it's almost an acceptance in the Family Court that, 'Well, dad says she can't put the kids on to stop him from seeing them and she failed at that, therefore ...'. And so, these kids are not protected in either place, because either place is looking to the other place as to what they did, if that makes any sense… They're what I call the Black Hole Children. They just don't get looked at properly because of it. So, in terms of kids' issues, exposure to family violence is family violence, right? We all know that. So, if the kids have been present when dad's beating mum up, why are the kids not put on the order? …So that is an issue and I don't know how that could be sorted legislatively. If only that side of the road did their job with what was in front of them and didn't think about the other side of the road. But they do and I don't know whether that's an education issue for them to know that the majority of people in front of them are not trying to undermine family law orders. They're not. Who would want to be in both courts?

This sentiment was echoed by Directorate#2:

> The most risky thing for women at the moment having anything to do with the legal system is the *Family Law Act*. It's the family law, Family Court, I mean, and the way that the law works. The way the culture of that works – and I know that's outside of this, but for me it's deadly for women at the moment. And I'm not sure our courts all get it either. … I think there are a lot of players out there who have, including judges and magistrates and courts, that don't get it and I don't know how you do that.

JUST#17 also noted that 'it's not uncommon for the status quo in a family dispute to be set by an interim order, and that then sets in place a status quo for the Federal Circuit Court or the Family Court, and that's a big issue'.

In addition, JUST#7 recommended that

> [the] government consider options for how to best move towards a more collaborative system to maximise consistency between FVOs and family law orders. This should include consideration of practices in other jurisdictions, including Victoria, where we understand magistrates must exercise federal

> jurisdiction to amend family law orders if they are making a family violence intervention order which would otherwise be inconsistent with those family law orders.

The Definition of FV

Although the Standing Committee did not make any specific recommendations about the definition of FV, it noted that a standard or working definition is important for several reasons, including developing a shared understanding, building an evidence base and for measurement and policy reasons.[65]

Technological abuse is widely recognised as on the increase and currently problematic to enforce. Most of the professional stakeholders and all of those with lived experience believed that the definition of FV should be more inclusive, either in the provision itself or by providing more examples.

Participants, especially those with lived experience, also reported the need to include and to more clearly define both coercive control and different types of cultural abuse, including dowry abuse, as well as witnessing FV and child sexual violence. For INTER#1, it was important to have an inclusive definition, while FVW#1 stated:

> Well, I think we need to recognise that we've actually made, it's been a failing to not to include sexual violence in all of its many types, in the very definitions that name sexual assault, so it's really difficult and the other thing is whenever we talk about children I try to suggest child prevention council to focus on children and look at the impacts of child sexual assault across a whole lifetime for people, and to men and women it's really different. And where we ended up was a forum on what we do for children who are exposed to domestic violence.

However, some professional stakeholders also expressed concern that including a type of FV in the definition did not necessarily translate into FVOs being applied for and suggested it may be difficult to demonstrate some forms of violence, such as economic abuse.

Other Stakeholder Suggestions

Improve Inter-agency Co-ordination and Communication

The majority of both cohorts identified issues in communication and co-operation across agencies in various sectors. LE#7 found that information sharing between separate support agencies was 'ad-hoc at best'. As the support agencies appear to operate independently of each other, 'the approach to supporting FV victims and, more importantly, reducing the number of FV incidents, lacks coordination and can appear to be quite disjointed' (LE#7). LE#3 called for 'improve[ment in] the communication processes between the various parties involved in managing family violence orders, including the police, the courts, and Court Protection Unit'. JUST#5 called for:

> *better collaboration as well with some of the services that are around.* It seems to be that in the ACT... I'm coming across other service providers that just haven't been around. So, it's a combination of perhaps some better collaboration, but …the main one would be rehab. Because I think a core issue for all of this stuff for us is issues with drugs and alcohol. And if people simply

[65] Standing Committee on Justice and Community Safety, *Report on Inquiry into Domestic and Family Violence – Policy Approaches and Responses* (2019) 17.

> aren't on those drugs, there's not going to be ... They're not even going to come under the umbrella of this Act.

LE#7 suggested that:

> *the entire system needs to be looked at in order to gain a more coordinated and consistent approach across all jurisdictions.* Support agencies, police, the legal fraternity (family lawyers and those acting as Independent Children's Lawyers, as well as those sitting in judgement of perpetrators and victims alike) need to be better informed and *they must work together to ensure that victims of FV are better protected, are not made to feel as though they are to blame and are not subjected to unnecessary emotional and financial stresses when trying to protect themselves and their loved ones.*

INTER#2 identified a particular need for information sharing in relation to people with disabilities:

> I think that there needs to be an information sharing hub and better de-siloing between the violence sector and the disabilities sector. … one of the ways in which we could see better implementation of the Act would be to focus on the local area coordinator within the [National Disability Insurance Scheme] (INTER#2).

As mentioned earlier, JUST#1 suggested that communication, collaboration and engagement with victims and perpetrators could be improved by co-locating the primary agencies and support services involved in FV response.

<u>Draft a Legislative Framework to Facilitate Information Sharing</u>

A number of professional stakeholders felt that a legislative framework was needed to facilitate information sharing and better support services:

> I think we should have a provision in the *Family Violence Act* to allow information sharing for risk management…If you look at the Tara Costigan [case], the maternal health nurse knew something was going on…But she didn't have a tool to pull out that professional judgement into a form that said, 'actually they're at high risk'…*the other jurisdictions have all allowed it through their family violence legislation* (Directorate#2).

JUST#2 was concerned about 'just making sure that …we're providing legislation that can support services as well, in relation to doing the work, so victim services and perpetrator services and things like that. If we make any legislative changes, we actually make sure that there's service coverage to do that'. For FVW#5,

> that one is crucial, in terms of the legislation. I think that for those women who are being supported by a service like [X], then to be in a position to assist in a risk management plan for the client is vital, because we know more about the woman than they'll ever know. We do our own risk management stuff, safety planning, where we've had constant conversations. We know so much about the woman and the way she lives her life, the people in her life. So those things are taken into account when we're doing safety planning and of course the risks associated with all of that, but when the police and anybody else... we're not considered when they're doing their risk management, safety planning. … I

> think it should be part of the legislation... if it's part of the legislation, and if it's not being acted on, then there's a way that we can make people, all departments, directorates, whatever, whoever, accountable for not supporting a woman to the best of their ability.

Others discussed the importance of having an appropriate legislative framework and knowledge about what is – and is not – permitted:

> what we found through those workshops is that, even when people have the power to share the information, they thought they didn't have the power and so, they would not share the information. They also wouldn't ask for consent to share the information if they had the choice to do so or not to do so. And there was quite a serious misunderstanding of people's abilities within the current legislative patchwork quilt. And that's kind of a key part of it. So, we could change the legislation, but it would just add another layer, I think, to the patchwork quilt of perhaps not necessarily understanding, unless we could make that layer simplify all of the other layers, but that would be quite an interesting and complex drafting process (JUST#14).

> it comes down to I guess educating your core partners and the partners that you're working with as to why this information is being shared …for me it is about finding a framework that's going to be conducive both legally, because we are a statutory organisation, as well as in the child's best interests and in practice (Directorate#1).

For some, a need for improved inter-agency communication was seen to be necessary in looking at how contact with partners or ex-partners was managed by those involved in perpetrator programs. As discussed by JUST#1:

> where engagement in perpetrator programs or other forms of reconciliation are desired, judicial orders may permit limited or supervised contact between parties…[to] supports rehabilitative efforts, *it is important that any effort to re-establish contact between parties is undertaken in consultation with all agencies involved to ensure that judicial orders are adhered to and the safety of FV victims remains a paramount consideration.*

<u>Improve Information Sharing Where There Are No Criminal Charges</u>

Several stakeholders commented on the need to share information amongst the different stakeholder agencies in the absence of criminal charges:

> we need to have a clear framework for us to do this through and I'm hopeful that some of the work of the Family Safety Hub will allow us to do that, because we do need to share this information…so we do need a secure mechanism to share this when there is still no criminal charges in terms of sharing information about the risk of the perpetrator that keeps the organisation safe as well and doesn't make us exposed (FVW#4).

> Maybe the way forward is working out what people need to know and how they're going to get the information. So it's having people come together and maybe having a champion to do it. Ideally a champion who is not invested in one side (JUST#17).

> I think it'd be good if, obviously like the standard FVIP stakeholder, but I think also that would be great if that was extended beyond that to looking at Education and some of those more community-based periphery services that are engaging with these families because...I'm trying to think of some of the men that we're working with at the moment where we've considered the risk to be relatively high, *we've used our discretion around duty of care to ask police to put alerts on files and things like that, but to really be able to talk about and talk to the services who are actually engaging with that family, which are usually places like education*, about the risk would be useful from the perspective of being able to share risk information and help that be a little bit more visible (FVNW#2).

It was suggested that the improvements needed to be led by the Coordinator-General for Family Safety, Jo Wood, and would require governmental involvement. For example, Directorate#5 noted:

> I think there's much more we can do working with Jo [Wood] in the centre of government to better connect up our service system. Certainly for those families that are in that no man's land, where they don't trigger or the supports that are in place if an issue happens

It was also suggested that using memoranda of understanding between key stakeholders such as the police; Government directorates, including CYPS; DVCS; the Office of the Victims of Crime Commissioner and other support agencies would help to formalise the arrangements under which information was shared by parties. Another proposal was to adopt processes similar to those used for registrations to work with vulnerable people and better use of technology and databases to support and facilitate information sharing. JUST#13 referred to a recent case involving family law and FV and explained how:

> police, DVCS, Care and Protection and ourselves, the family lawyer and the family violence lawyer all met last week. *And we did an information sharing exercise where, of course, had to get the client's permission, but the rest of [us] operate under umbrella information sharing. And we basically did … an exchange of information...* we should do more of them, because we all sit with pieces of information and …the group really made us [bring] all that information together… This could be done by email rather than having the key players in a room together.

Provide More Information to Applicants

Our findings have revealed that some people affected by FV are not provided with information about when perpetrators are released and/or other information that is necessary for their safety. Several stakeholders, both professional and those with lived experience, had suggestions about how to rectify this:

> ensure that the formal FVO documentation is provided to the applicant as soon as possible and that guidance regarding the next steps, including key dates, is included. Create some guidance for applicants and respondents so each party understands what is expected of them during the process. Ensure that this information is clear and available from a range of channels and support services. Use a design thinking approach to review all processes associated with the management of FVOs and, in particular, Special Interim Family Violence Orders, to identify areas for improvement and to ensure they are efficient, effective, and fit for purpose (LE#3).

> [We should] consider the scheme of allowing individuals to consult a register to check if someone is or was a respondent in FVOs proceeding and the status of such FVOs. I believe this is being tested at Tasmania, with indication that it increases women's safety (FVW#2).

> Communication with victims must go through a complete overhaul, as it is non-existent for those that we have had contact with in the last two years holding a FVO. Victims should have an open line of communication with authorities and support services at all times. Delays in locating respondents and in serving FVOs should also be given a maximum timeframe in which to occur, unless in well-justified and documented circumstances. *Once again, victims should be informed of this process*, whether an order is or not active, and not left without this crucial information, which they can't obtain by calling, and calling, and calling all possible channels, including police, DVCS, Legal Aid, without success, every single time (FVW#2).

Provide More Information to Respondents

According to JUST#6, 'increased support and interventions for respondents is essential to improving safety of family violence victims'. Accordingly, it was suggested that the ACT Government should explore how to

> best provide practical support and programs to respondents to reduce recidivism and increase safety, including:
> - the development of ACT standards for family violence behaviour-change programs;
> - consideration of what kinds of programs could be made available to individuals who are respondents to FVOs but have not been charged with a family violence offence; and
> - strategies regarding how the ACT might attract and retain a workforce of suitably qualified practitioners with expertise in this complex area of practice.

JUST#15 suggested that perpetrators/would-be perpetrators need to be more fully informed about what behaviours constitute FV:

> perpetrators won't come into contact with the Act unless they're being charged for an offence committed, so if we're going to do anything with the Act, it's having an education component to it... Once it's a civil process, if there's an application process going, there's an education component to it or something to feature in the sentencing aspect of it... just something in there that deals with education.

FVNW#3 likewise emphasised the need for information for perpetrators:

> If men don't see themselves as violent, then they're not likely to engage in any services. If, all of a sudden, they realise that they are, 'God, I didn't realise that. Maybe I am and maybe I need to change my behaviour. Maybe I need help to change my behaviour'. But if I don't know that it's abusive and controlling, then I'm going to probably keep doing it.

Provide More Education about FV and Orders

Some participants highlighted the inadequate response they received from various players in the system. For some, this was seen as a consequence of individuals' lack of knowledge about the dynamics, manifestations and effects of FV and the need for more education across professional sectors and the community:

> For the *Family Violence Act* to be effective, *magistrates must have a good understanding about FV*, the behaviours of the perpetrators and the serious impacts that even non-physically violent abuse has on the victims and those close to them (LE#7).

> If you get the copper who was accused and hates women, then there you are....where do you put legislation that requires police to be trained regularly to listen to the impact of things? Where would that go? (JUST#11).

> I think implementation is education. That, for me, is the gap. It's the gap. It's education. So, if you are going to be someone who is hearing interims, you need three-hour training, a day's training.... because how can you grant these without actually understanding them? (FVW#3).

> *Educate and train staff on the processes, so that they can provide the correct advice at each stage of the process.* Educate the various support services on the processes, so that they can better educate and manage the expectations of their clients (LE#3).

For Directorate#3, knowledge should be supported by an 'embedded resource' to answer relevant questions:

> Well, knowledge really, I think knowledge of the legislation, how it affects people. … So, I think what would help is an embedded resource actually similar to the health justice partnership, more of that really. *Access to a lawyer on site who you can ring and say:* 'I've got this situation, what's the law around this…or can I refer this person to you?' is more helpful than a lot of training, I think (Directorate#3).

In this context, we recognise the additional advice from JUST#10 that FVO videos that 'provide information to assist people to navigate and understand the different stages of the legal process (applying for an order and the conferencing process)' have recently been added to the Magistrates Court website. The 'website now also includes contact information for the AFP and the DVCS 24 hour hotline'.

Suggestions to Improve Court Processes and the Operation of Orders

<u>Improve Processes in Relation to Court-initiated Orders</u>

As discussed in Chapter 6, LE#3's experience points to significant problems with SIFVOs, including her lack of a return conference or the ready availability of a copy with the relevant information, including expiry date. FVW#6 also felt that more guidance about court-initiated orders needs to be provided:

> there needs to be more provisions in the Act and legislative guidance around court-initiated orders, because that's really disempowering. There's no process. I

> think there needs to be actual process in the legislation, like there is on if you're satisfied an interim order is granted. This is when a return conference sits. If a return conference at least happens, this is when this happens.

In reconsultation, JUST#6 noted that 'our experience is that the serious issues raised by LE#3…are not isolated events'. Accordingly, JUST#6 called for:

> consideration by government and justice agencies about:
>
> - How to best achieve consistency in how SIFVOs are finalised at the conclusion of related criminal proceedings; and
> - How the ICMS system could be used to more readily to identify related criminal proceedings when an interim FVO is made or prior to the parties attending the return conference.

In reconsultation, JUST#10 noted that the Magistrates Court had taken steps to improve the management of SIFVOs, including:

> the addition of the protected person as an interested party to the proceedings, and a standard direction that the protected person be provided with copies of all relevant orders and timing notices throughout the proceedings. The Court is also working to implement further changes to improve and simplify the manner in which these types of orders are managed.

Allow for *Ex Parte* Applications

Another suggestion was for the interim orders to be made *ex parte*. This would allow for the applicant to continue to be protected under the order, even in circumstances where the other party, for example, was interstate at the time:

> At the moment, you go in, you fill out the paperwork, it comes back for a return conference around seven to 14 days, sometimes 21, whatever. It comes back for a return conference. You then have to request, can you go before a magistrate, and ask that the interim ought to be heard. Then you're in the courtroom with the other party. I don't know why you couldn't make that application *ex parte* on the basis that you do it anyway with an application for an interim. Why can't it be, you arrive, if you want your interim order extended, you do the similar process? You apply, you say, 'I want an extension. Can you grant me the extension on an interim basis right now? These are the reasons why I want an extension,' and then it runs that same way. Because then, as soon as it's served, you've got that protection as well if your order runs out. Because then you've also got to have that documentation served on the other party. They've got to show up. What if the other party is interstate now and it takes a couple of weeks, or whatever? (FVW #6).

A second participant raised the issue of orders and amendments not being able to be made in the absence of one of the parties:

> So a lot of problems about whether or not those can be done, even a temporary extension can be done, *ex parte*, essentially. So that's the thing. So, you get the interim order *ex parte*, but if something changes and you can't get an urgent amendment to your interim order *ex parte*, you have to apply for the

> amendment, it's set for conference and it gets set for hearing and actually the majority of amendments don't get decided, if they don't resolve at conference, what they often do is just say 'we'll decide that at final hearing' (JUST #13).

Amend FV Forms and Orders

JUST#17 suggested introducing – as a default in orders – that it would be an exemption to a non-contact condition that a respondent would be able to come on one occasion with the police to collect their personal belongings, as

> that would provide a mechanism that would really assist us. It would just be a lot less paperwork. It would have to be expressed in a way that's clear and it would be nice if it's not hidden away in an offence provision. It could just be a deemed provision in relation to contact or approach, and not approach a residence as well.

Another suggestion involved simplifying the wording on forms and orders:

> the application…it says not to commit family violence and then you have the opportunity to write specifically and list them, but registrars say, 'No, I don't need to write the specific list, because we know what the family violence thing is'. I actually think that that should be 'family violence, which is:' and list it. Re-list the definition in the form, because then you can't say ... I feel like out of sight, out of mind for police officers. So, if it says not to commit family violence, their picture in their head about what family violence is can be totally different, but if it says not to commit family violence, which includes, blah, blah ... It's in that, and they go, 'Look, see? Their social control. They're using technology, they've threatened to harm my pet...they've hit the cat,' whatever, it's there. It's in their face (FVW#6).

> [I've] touched on plain English orders, so I won't belabour that point, but it's obviously one, given the clientele that are referred to us…those primarily being children and young people and adults with impaired capacities. Obviously, with those two particular groups, the more plain the English, the better (JUST#6).

> The wording of standard FVOs frequently includes use of double negatives and legal or technical jargon which means that respondents as well as police, support workers and lawyers, often do not agree on what conduct the FVO prohibits. Unnecessarily complex wording poses particular barriers for applicants and respondents with low literacy levels or those with limited English. FVOs are most effective when their terms are readily understood by both parties and by police. Complex orders can unfairly impose on the rights of the respondents by placing them at risk of being charged with breach of the order simply because they did not understand its terms. Further, applicants who cannot understand the terms of their own order are less likely to identify a breach and proactively report this to police. Where the terms of the order are unclear, police are less likely to take action in relation an alleged breach, creating frustration for applicants and decreasing the likelihood that they will report future breaches. Each of these outcomes decreases the ability of an FVO to maximise the safety of an applicant whilst unnecessarily infringing a respondent's rights (JUST#7).

JUST#7 also suggested that NSW provides a suitable model, as it 'helpfully employed a co-design process to ensure the revised orders could be readily understood by stakeholders and community members'.

We note that, in response to the draft report, JUST#10 advised that the forms used by the Magistrates Court were developed in consultation, with input and feedback from relevant stakeholder organisations, including Legal Aid ACT. This process included advice on the use of 'plain language'. Nevertheless, our findings and recommendation suggest the need for further work in this regard.

Change Provisions Concerning Length (and Extension) of Orders

Several participants with lived experience would have felt more protected and comfortable if the order could have been longer or with different conditions. Directorate#4 also suggested that orders be given for longer periods of time:

> some other jurisdictions… are actually providing family violence orders for much longer periods than I think we generally do, like up to five years. …That has been raised before, about, it's quite a process for someone to go and get a family violence order and, for some people, *they'd have much greater peace of mind if it didn't run out in two years.*

JUST#1 suggested that an FVO should automatically be extended where the respondent is imprisoned:

> Where an FVO is issued prior to or during a sentence of imprisonment, it is likely that the FVO will expire by the time of release. In this circumstance, absent the extension of an FVO, a victim may be left with no legal protections and limited grounds upon which to obtain an FVO afresh*…significant protection can be afforded through automatic extension of a FVO upon commencement of a sentence and/or maintenance of a FVO for a defined period post-release.* Such an approach would afford victims necessary protections. It would also not impose additional burdens upon a respondent in excess of those which they would otherwise have been subject to, but for imprisonment.

JUST#17 was particularly concerned by the legislative drafting in the provisions around extending interim orders:

> The test for the extension of the order [in section 86] is odd. It's hard to know who has the onus of proof and what they need to prove. It's written twice with double negatives… So what I'm reading, the applicant says, 'I've applied. I've got nothing to say'. And the respondent doesn't turn up and you must extend or if they do turn up and say, to the respondent, 'OK, the onus is on you to demonstrate to me that it's no longer required'. It's bizarre. I can understand why it's been written that way but in practice it's a bit hard to actually formulate the test. I guess it's… the onus of proof is unclear. It might be on the respondent.

Make it Easier to Deal with Matters by Consent

> And also, making it easier for people to do things by consent. At the moment, you have to have the matter released back to the court, go to court that day, blah, blah – it's a bit of a saga (JUST#3).

Provide Supervision Services for Children at Court

> The one thing that would be even more helpful over there, at the Magistrates Court, for DV court, is to have... I don't know if you want to call it a childcare centre, or whether there's even capacity for that to happen at court, but for workers to be available at the courthouse to support children whose mothers are going in to get orders, so these children aren't actually sitting in the courthouse and they're hearing all these stories (FVW#5).

Ensure Speedier Processes

> the timeframes for family violence criminal matters in the courts are so long and, particularly for lower level offences, where it's unlikely that people will be sentenced to the AMC, they're much more likely to get a good behaviour bond…and if they're not getting in front of the court for nine or 12 months, it's hard to see what protection that process has offered the victim (Directorate#4).

Ensure More Flexibility

JUST#6 noted that there was previously a morning and an afternoon list for protection orders and explained:

> there is now only a morning list with a strict cut-off. Those agencies who are based at the court, DVCS and Legal Aid, are often dealing with a very high volume of applicants, and have had very inconsistent messages from the protection unit as to how they can file orders in a timely way… In my view, in terms of the general efficiency of the Act and the court's implementation of it, having Legal Aid and DVCS in that role is key. But when there is insufficient flexibility around recognising the importance of them being able to file in a timely way and, at times, file 5 to 10 to 15 minutes out of the deadline, I think we're unnecessarily limiting their ability to actually work with people around their safety.

JUST#3 believed it was more appropriate for magistrates to make an extension order than registrars and offered an idea for how this might be better facilitated:

> you skip the process of the conferences and it easily leads to this is an application for extending the order and it has to go before the magistrate. And the interim order could be extended, but only to the date of that hearing.

Consider Different Types of 'Breaches'

> My view is, protection orders throw a whole lot of things into one classification and capture a whole lot of things... and there are different breaches of protection orders, like different intentions. There's the 'nothing's going to keep you safe from me', as opposed to two people trying to get on with their life and an inadvertent breach …And the legislation tends to throw all of those into one. So, you could have two breaches of protection order and one could be, 'I tried to ring my son for his birthday but my ex-wife picked up the phone', as

> opposed to the terrorist who's just going to terrorise her and it doesn't disaggregate those two things (JUST#15).

Policing Issues

Add Power of Entry

JUST#1 called for:

> a power of entry [to be] contained within the Act. This power would allow police to enter premises where they reasonably believe an FV incident has occurred, however is no longer on-going. This power would assist police in situations where the offender has high levels of coercion and control over the victim, and would facilitate the investigation of FV incidents by police.

Train Specialist Police Officers

> Police officers obviously have to know a lot of different laws and they can arrest people and powers they have and stuff, but I would say, getting the specialist people that deal with it day in, day out to say, 'This is what this is. This is how it can be enacted. This is what you can charge for', that would be helpful (FVW#6).

Make Changes to the *Crimes (Forensic Procedures) Act 2000* (ACT)

JUST#1 advocated for several amendments to the *Crimes (Forensic Procedures) Act* 2000 (ACT) in order to reduce the number of times that a victim needs to be interviewed. Specifically, JUST#1 suggested that FV victims be excluded from the definition of a 'volunteer' for the purposes of a forensic procedure.

Better Use of Technology

Some participants identified the need to make better use of technology. For example, JUST#3 wanted to see 'clear provisions around telephone hearings…Even video – maybe video link could be set up in place of this'. JUST#6 likewise felt that,

> in terms of further change, there are still areas to be explored in relation to how the use of technology may ease the implementation of the Act. *In particular, the ability to submit an online application for an interim FVO and the ability to appear at an interim hearing from an external location.* My vision for an ideal ...would be to enable a client to meet a lawyer in a location to decide an interim order was required, to submit that before the appropriate cut-off date, and to appear via [audio-video link] or FaceTime equivalent secure link from their lawyer's office, with their children sitting outside in reception watching their iPads. So, this need for people to be dragged into the court to stand in line, potentially with the respondent, who is also queuing up to sit in the foyer and scribble things down, because they didn't realise there was help available. Then have to appear, sometimes waiting hours in the court with parking and childcare and other concerns, all of those things I think are an impost on applicants that could be alleviated by the use of technology.

Electronic Monitoring

FVW#2 suggested the 'utilisation of electronic monitoring ankle bracelets on those who breach a FVO'. JUST#1 recognised that there are human rights, legislative, and resourcing implications that need to be fully investigated first, but suggested that:

> Advances in technology afford a growing number of methods for authorities to monitor the location of a respondent, if lawfully authorised to do so…research [should] be conducted into the legal authority of a court to order that a high-risk FV offender, who is the respondent in a FVO, be monitored by technological means.

Increase Perpetrators' Accountability

The potential use of electronic monitoring is a means of increasing accountability for FV perpetrators. In addition, LE#7 suggested that criminal charges should be the automatic outcome for those found guilty of FV as a result of a contested hearing:

> Of course, this type of legislation would need to be given careful consideration as, if not carefully drafted, it could have a negative effect as well…the fact that someone may be charged with a criminal offence could further influence those magistrates (and Federal judges) who may already be inclined to downplay the seriousness of these crimes. On the other hand, the threat of criminal charges may result in fewer cases being 'contested' by the perpetrators. … many perpetrators will never be held accountable for their abusive behaviour until, or unless, they overstep by escalating to physical violence or murder.

FVW#5 talked about a program in the United States:

> When the expiry date was coming up for those orders to stop, *the burden was on the perpetrator to go back to court and prove to the magistrate why the order should be dismissed or not continued*, what things had they done to change their behaviour, what their commitment had been, what they had committed to do in the future and why the order should be dismissed at that point in time. …And not for the woman to go back and say, 'I need this order continued because he's still doing these things'.

Improve Data Collection and Use

> in terms of how the justice system and the Family Violence Act works, I think there's a lot more insights we could gather from data about how our Act is working and one of the areas that particularly interests me, is how effective are family violence orders and what kind of rates of breaches? Data that would allow us to look at whether certain responses to breaches, for example, reduce the chance of it happening again, all of that stuff (Directorate# 4).

> [C]ertainly from a data collaboration perspective, I'd want more to do with CSD around identification of their families at risk and what can we collectively do to support. … I think they link into there, Health, housing are there, but they're the keepers of knowledge if you like, in terms of what we're seeing (Directorate#5).

Provide Additional Resources and Services

Perhaps unsurprisingly, several participants called for additional resources, especially legal resources:

> More support services actually at court (JUST#12).

> The key issue for me is the communication and cooperation between a range of stakeholders and *ensuring we've got the appropriate levels of wraparound services and support* (Directorate#5).

> There's a structural resource challenge … in the [court] registry and that is, everyone's working very, very hard. They're always surprised how many matters are coming through the door. There's been an increase in matters of family violence. It's not 200% increase but it's enough that it's been gradual to apply pressure on the current resources… there's people turning up and working 10 hours a day flat-stick (JUST#17).

> Yeah, we just find a lot of case management, so what they do currently, you have your conference, which is the first time both parties are at court, and if it doesn't resolve, what happens is they give both parties a bit of paper that says 'you agree on the next occasion it's going to run, you need have a lawyer, you need to have your people and your stuff together'. And I don't think they even give a copy of that document to them, they just make them sign it and it goes on the court file. And they send these self-rep[resented partie]s away, and then obviously, you know, he doesn't think he needs to do anything, he doesn't do anything, he turns up at court and she maybe has had to spend weeks of her life preparing, gathering evidence, and then he comes to court and he consents. Whereas, if maybe they had, a week out from hearing, they did a call-over, they did a directions listing, and they had both parties there and they said 'well this is happening next week, are we all actually going to go do it?' There will be a lot of really frustrating respondents who just say 'yep, I'm going to do it', but particularly if it's before the magistrate, …because they just see, they don't get I think a sense of the gravity of what it's going to be like. It should just be like, what's actually happening, and then they can tell them 'OK, I've now gone through the call over for next week, I know there's eight matters are going to run, you're not getting on'. …It'd save everybody … and it's a resource issue for us (JUST#13).

> Continuing a strong funding for the Family Violence Unit of Legal Aid, they do amazing work. …The other thing is funding final hearings. There's a load of support to apply for the order, [but] there's limited funding, especially in the income for the final hearing. Because it's not a huge resource for them. It's only a half-day type of work. It's not like you're running a two, three year case (JUST#3)

> I think just more judicial resources is critical …I think there are plenty of deputy registrars running around but there aren't enough magistrates to actually allocate the time that's needed to hear them properly. And it's actually what makes people accountable really, is the hearing of the matter and findings being made. Much as everyone prefers that that doesn't happen, it kind of needs to happen more, I think (JUST#8).

FVW#2 was particularly concerned about the lack of resources to provide practical assistance to those affected by violence, referring to recent funding cuts that have

> meant that we were closing many of the actions that we did in the past in direct support of women and children, including, ironically, the only program that Safer Families recently started to offer victims, the $2,000 assistance, which women utilise to purchase fridges, washers, vacuums and other basic household items to set up their homes with their children, once again, after leaving the refuge. We had been offering this assistance since 2006 and had to end it in 2014, along with a reduction in the number of families that we support, the end of our assistance to children for participation in extra-curricular activities and our payment of courses for women to build skills and prepare for employment and … removalist and storage costs, so that women could keep their furniture and their whitegoods and their children's items after leaving their home due to violence, and the list goes on.

FVW#2 also identified the need to consider:

> the matter of property lost by women and children when they leave their home due to violence, during a crisis, taking very little with them, leaving all behind, including photos, documents, toys, clothes, shoes, memorabilia, food, the shared belongings of their home such as white goods, furniture, linen, never to recover, mostly. It is so very hard to find help for them to retrieve their things. It does seem so logical to ask police for help, but not as a favour, but a right that must be given deserving attention. They beg us for help, try to influence us to help them to return to the property, enter and remove their belongings, or to call directly the perpetrator to negotiate, the very things that we are not able to assist with. It is just not fair for women and children. I think this could be easily resolved by checking with women if they need to retrieve belongings/docs and including the need for police assistance in the FVO.

Ensure that Overall Aim is to Reduce FV

The final suggestion is broad in scope, namely, seeking the reduction of FV in the ACT:

> It is my opinion that, in addition to any legislative changes that might be enacted, the ACT needs to adopt proactive initiatives where success is measured in actual reductions in FV in the Territory. Clear and measurable objectives should include things like:
>
> - reducing the number of FV-related deaths by 50% (and then eliminating them altogether);
> - reducing the number of police call-outs to FV incidents; and
> - reducing the number of people reporting to hospitals with FV-related injuries.
>
> Changing community attitudes is one thing, [but] actually reducing the incidence of FV is the core of the matter. *Any changes to how FV laws and protections are implemented in the ACT should have this as the primary objective* (LE#7).

Summary

Our findings support or complement several of the Standing Committee's recommendations, including further assessment of service of orders; conflicts between proceedings in the Family Court and Magistrates Court; and the need for improved case management and information. However, the majority of participants were not in favour of police-initiated orders.

The majority of participants supported broadening the definition of FV, either in the provision or by giving examples and making it more inclusive of the types of abuse that may be experienced, but are currently not well-understood. We note that definitional gaps may enable perpetrators to continue to exert control.

There was support for simplifying the wording of forms and orders. In addition, participants made a number of suggestions designed to improve the operation of the Act, including increasing the information provided to applicants and education about FV and orders generally; addressing issues in court processes, policing issues and the use of technology; increasing perpetrators' accountability; improving data collection and use; and providing additional resources.

8. Conclusion and Recommendations

In this chapter, we return to the major questions of the review and examine the conclusions we have reached concerning each of these issues. We preface our conclusions with some primary observations. First, all stakeholders are committed to improving the safety of people who are experiencing FV. Their viewpoints might differ to some degree, depending on their personal experience and/or sector in which they work. Each sector has its unique perspectives that fit its aims and processes. However, we see, that across all sectors, there is a shared and potentially unifying principle of victim protection being the top priority. Second, both the professional stakeholders and those with lived experience agree that the primary problem with the ACT response to FV is not the legislation, but communication and co-operation issues between agencies. Informational siloes mean that those with lived experience may have less information and continuity of care. The irony is that, although everyone is primarily concerned with victim safety, the flaws in inter-agency implementation can translate into the opposite actually eventuating. It is to be hoped that the suggestions in the previous chapter, if adopted, will go some way to ameliorating these siloes. As one FVW worker eloquently noted, after reading the draft report:

> we do not share, we do not support, we do not speak, we do not empower each other, we do not rise above the confines of our own interests and organisations, we do not make changes and we do not progress together to improve the treatment of women and children. What a fantastic contribution from this report, if only we can now start crawling towards unity. So many insights, the open display of a direct impact of our actions on women and children seeking our help to be considered, safe and free. Yet, we fail them often.

In addition, in reconsultation, JUST#6 reiterated

> the importance of ensuring the *Human Rights Act 2004* (HR Act) is a key document in analysis of commentary from stakeholders and those with lived experience and the resultant recommendations….[the] issues are underpinned by a focus on ensuring that human rights of individuals experiencing vulnerability are upheld and strengthened by the outcomes of this review.

We recognise the importance of ensuring human rights compliance, especially as a result of the potential implementation of the recommendations of this review.

Is the Act Operating as Intended?

There are participants who had positive comments about the Act and its implementation. Several spoke highly of the new definition. Others commended simplification of forms, the introduction of AFP liaison officers, cost provision changes and what they saw as improved co-operation between (at least some) parts of the sectors involved in responding to FV. Some of the lived participants saw improvement in the protection offered by the Act, particularly because interim orders are now more readily available for those experiencing non-physical abuse.

However, most stakeholders expressed concerns about how effective the Act is in providing protection to victims and justice. Concerningly, most of the lived experience participants we consulted with did not feel safe. In addition, most of the professional stakeholders were at best equivocal in relation to what they have observed, in terms of the safety of those experiencing FV.

The main reasons the amendments are seen as limited concern their implementation more than the actual drafting. The major part of the problem is seen as coming from translation of black-letter law

into operation, with most issues deriving from the prevailing culture and/or systems in place. Examples of this include some types of abuse added to the 2016 definition not being recognised adequately by police or the courts. Issues with service of orders also limit the extent of protection afforded by the Act.

Another key issue relates to the after-hours orders scheme. Intended to offer protection to FV victims, stakeholders see them as not being used adequately, largely due to a lack of understanding about their mechanics and potential. There are also issues with the SIFVOs. Ideally, these could routinely protect victims in cases where the perpetrator is arrested. However, there would appear to be a pervasive lack of understanding by many in the criminal justice system and FV sector about how these work. This can translate into victims being unprotected without knowledge of when the order expires.

Other factors impeding effective protection include a lack of appropriate support being given to victims, inadequate resourcing and perpetrators not being held accountable by police. Concerns were also raised that children and those in intersectional groups were even less protected. The position in relation to children being included on FVOs caused concern for some mothers about their children's lack of safety. Furthermore, the drafting of orders as currently dictated by the Act may allow perpetrators to continue to exert control.

Lived experience participants were generally positive about the police response to breaches, though they recognised that police action was sometimes limited by challenges in proving the perpetrator was responsible for the breaching conduct and/or the conduct was not considered to be in breach.

Another theme that was repeated was that the effective application of the Act often depends upon the individuals within the system. This emerged clearly from the lived experience participants, but was also noted by some professional stakeholders. For example, FVW#2 noted: 'It's personality-based. When that personality goes ... And not just us. I'm talking even within the courts ... I think it falls down'.

Overall, we conclude that the Act is not operating as intended. This view led to the many recommendations for reform discussed in the previous chapter.

Has the Act Effected Systemic Change or Cultural Change?

Although there has been some improvement in the systems that underpin the operation of the Act, we have seen through the experiences and voices of many that there are numerous systemic breakdowns in communication and information sharing. One FV worker went so far as to describe the situation as 'a complete systemic failure in considering and including victims in their thoughts and practices in relation to communication'. This is without a doubt the most important conclusion of the review. There is truth in the adage that information is power. As FV is aimed at disempowering those it affects, there is a tragic irony where FV victims are not being advised about legal constraints or alerted to potential high-risk times. That lack of information sharing may be indicative of systemic failure. Each sector has the same aim – to protect FV victims. However, to do so, the different parts of the system must work collaboratively. We have noted that some agencies see themselves and others as doing so; however, those with lived experience have each identified where there are (different) gaps between FV services and criminal justice agencies.

Whether there has been a cultural shift in attitudes and practices concerning FV is a separate question with a slightly different response. Based on the answers given by some professional stakeholders, there have been some positive changes in how the justice community understands FV, although this is generally seen as a slow transition possibly predating the Act. There is recognition

by some that social change cannot be legislated. Others expressed concern that there has been no change or that it will be short-lived, given staffing changes and the absence of both appropriate support and necessary training for those working in the criminal justice sector.

What is the Potential for Further Changes to Legislation to Support Best Practice in Preventing and Responding to FV?

Almost all stakeholders felt that further changes to the legislation would support the ACT in providing better practices in both preventing and responding to FV. Many of these come from their own experiences and are discussed in the previous chapter. As far as the specific proposed changes contained in our interview instrument are concerned, there were mixed views, with some of these differences seemingly stemming from participants' varied work and life experiences.

The majority supported other forms of FV being added to the definition. However, these acts also need to be specified in the orders so that police officers can act to ensure that breaches are treated as such. Many professional stakeholders also wanted the legislation amended to better protect victims from legal abuse, for example, through cross-examination on VIS. Most also felt that victim protection could be improved by changing how contact with partners or ex-partners was managed by those involved in perpetrator programs.

Other proposed legislative changes were not seen as desirable by the majority. For instance, giving police more power with PISNs was not regarded as positive by many, who already had doubts about how police were using after-hours orders. On the other hand, constraining the courts' discretion in relation to suspended sentences was not seen as desirable by the majority, while views were mixed in relation to bail.

Recommendations

In this section, we draw together the key implications of our findings for legislation, policy and practice and make recommendations for further improvement in the drafting and operation of the Act. Our recommendations highlight several areas for legislative reform, but focus principally on issues relating to the operation of the legislation, as it is in this context that our findings provide the strongest evidence for the need for improvements to move towards best practice in addressing violence in our families and communities.

Definition of FV

We recognise the inevitable trade-off between legislative definitions being specific and comprehensive, but potentially unwieldy, on the one hand, and succinct, but potentially omitting key examples, on the other. We further acknowledge that cultural norms are changing in relation to FV and suggest that, for both normative and practical reason, legislation should reflect this.

We recommend amending the Act to refer to specific types of abuse, especially technological abuse, and include specific examples of such abuse (e.g. electronic surveillance). Further consultation, especially with Aboriginal and Torres Strait Islander and culturally and linguistically diverse groups, should be undertaken in relation to cultural abuse (Recommendation 1).

PISNs and After-hours Orders

The majority of stakeholders expressed concern about the proposal to introduce PISNs. However, many also felt that the after-hours orders regime was not operating effectively.

We recommend that all relevant stakeholders work towards addressing the issues identified with after-hours orders and further consider the practical advantages and disadvantages of adopting PISNs as an alternative model (Recommendation 2).

SIFVOs

LE#3's experienced serious issues with her SIFVOs and JUST#6 suggested that this is not an isolated incident. The SIFVO regime was not an explicit focus of our review and was only mentioned by two professional stakeholders; one described it as positive, but highlighted 'real gaps' in processes for these and court-initiated orders, while the other identified a number of concerns. As set out above, the Magistrates Court has recently taken steps to improve the management of SIFVOs and we commend this.

We recommend further examination of the SIFVO regime, including collation of data on the use of such orders (Recommendation 3).

FV and Family Law

The comments from several lived experience participants identify the intersection between the ACT and Federal regimes when dealing with FV and family law matters as a key concern. It is beyond the scope of the present review to fully explore these jurisdictional issues, but we note the Standing Committee's recommendations. We also acknowledge that these issues have been considered at length by the ALRC, whose 2010 recommendations sought to improve safety, including by 'expanding the jurisdiction of courts dealing with family violence to maximise the chance that families will be able to get all the legal protections they need from any court they approach'.[66] In 2019, the ALRC recommended that the Australian Government should:

- consider options to establish state and territory family courts in all states and territories, to exercise jurisdiction concurrently under the *Family Law Act 1975* (Cth), as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts;
- work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare, and wellbeing of families and children between the family law, family violence, and child protection systems; and
- together with state and territory governments, consider expanding the information sharing platform as part of the National Domestic Violence Order Scheme to include family court orders and orders made under state and territory child protection legislation.[67]

We recommend that the intersection between ACT and Federal responses to FV and family law issues be considered as a matter of urgency, taking into account the relevant findings and recommendations of the Standing Committee and ALRC and relevant inter-jurisdictional practices (Recommendation 4).

Placing Children on Orders

Several participants identified barriers to having their children named on FVOs, giving rise to concerns about their safety. This issue arose most commonly in the context of family law disputes

[66] ALRC, *Family Violence – Key Recommendations* https://www.alrc.gov.au/inquiry/family-violence/.
[67] ALRC, *Family Law for the Future — An Inquiry into the Family Law System: Summary Report* (Report 135, 2019) Recommendations 1-3.

and should be considered in response to Recommendation 4, but may also arise in circumstances where there are no current family law issues.

We recommend that any legislative and/or practical barriers to placing children on orders be identified and removed, to ensure children's safety is the paramount consideration (Recommendation 5).

Bail

Most participants did not have an opinion about lowering the threshold for bail. Those opposed were primarily focused on victim safety, while the eight who felt the threshold needed to be lowered were all from the justice sector and had a variety of reasons, including victim safety. Given the lack of consensus on this issue, **we recommend this issue be reviewed in the context of a broader consideration of the terms and operation of the *Bail Act 1992* (ACT) and relevant FV policies (Recommendation 6).**

Suspended Sentences

The majority of professional stakeholders, particularly those in the justice sector, did not believe that courts' discretion should be limited when responding to breaches of a suspended sentence. By contrast, those working in the FV women's sector tended to disagree. As with bail, we recognise that the changes under consideration relate to a much broader issue, namely, the operation of the suspended sentence regime.

We recommend that responses to breaches of suspended sentences in FV cases be reviewed in the context of suspended sentences generally (Recommendation 7).

VIS

Most participants supported restrictions being placed on the ability to subpoena a VIS and cross-examine a victim on the content of this. Imposing such limits may minimise victims' trauma and is consistent with the spirit of the Standing Committee's Recommendation 54 discussed above.

We recommend legislative reform to limit the subpoena of and subsequent cross-examination on VIS (Recommendation 8).

Counselling Communications and Financial Assistance Claims

Most professional stakeholders felt that legislative amendments should be introduced to limit the disclosure of counselling communications in FV matters or claims for financial assistance compensation. There were two prevailing underpinning arguments: that the threat of disclosure might prevent some people from getting the counselling they need and that the information could be another source of power for the perpetrator.

We recommend legislative reform to limit disclosure of counselling communications in FV matters or claims for financial assistance compensation (Recommendation 9).

Information Sharing and Inter-agency Co-operation

As set out above, we consider the identification of gaps in communication and information sharing, to be one the principal findings of the review, with serious implications for families' safety.

We strongly recommend that better systems be put in place to ensure that people experiencing FV are fully informed and therefore better equipped to protect themselves. We

go further in this recommendation to suggest that external experts in the fields of FV and communications be funded to develop and test information systems for a sustained period of time, allowing for ongoing monitoring to illuminate and rectify persistent communication gaps (Recommendation 10).

We recommend the establishment of a working group, led by the Coordinator-General for Family Safety, to review the findings and suggestions of this review and develop an effective information sharing model to enhance family safety, with particular consideration of cases where no criminal charges have been laid (Recommendation 11).

We recommend that all relevant forms and orders be reviewed to ensure they are presented in plain English (Recommendation 12).

In order to promote victims' access to appropriate support, we recommend that a link to Victim Support ACT appear on the ACT Courts and all FV agencies' websites (Recommendation 13).

Resources

We are concerned by the comments from some stakeholders about the lack of legal and other resources, including direct practical assistance to victims and resourcing for perpetrator programs.

We recommend the allocation of adequate funding to meet the needs of all affected by FV (Recommendation 14).

Cultural Diversity

Some participants commented on the additional hurdles experienced by those for whom English is not the first language. In addition, none of our lived experience participants were Aboriginal and/or Torres Strait Islander. Accordingly, more research is required to ensure the needs of culturally diverse people are identified, ideally conducted by Aboriginal and Torres Strait Islander researchers.

We note advice received in response to the draft report that the ACT Magistrates Court website has recently been updated to include translated fact sheets (in 11 languages) for both applicants and respondents in FV and protection order proceedings. We support this development.

We recommend further consultation with culturally diverse and Aboriginal and Torres Strait Islander communities, to ensure that responses to FV are culturally sensitive and appropriate (Recommendation 15).

Research and Evaluation

Several professional and lived experience participants identified examples of 'cracks' in the system that allow perpetrators to continue to exert control, including through the legal system itself.

We strongly recommend, as a matter of urgency, that the Government fund additional research, aimed at identifying the cracks that allow FV offenders to continue to exert control, including how these abuses take place (Recommendation 16).

To a significant extent, our findings reaffirm many of the findings of the three reviews that preceded the introduction of the Act. This highlights how entrenched some of the challenges and gaps are, but also the importance of both ensuring that action is taken to address identified gaps and

regularly monitoring progress in order to ensure progress is being made in moving towards best practice.

In order to ensure that the required changes do take place and that the ACT works towards a best-practice approach to FV, we recommend that the Government fund a biennial external independent review of the FV landscape in relation to both the legislation and its operation (Recommendation 17).

Ensuring Reforms Are Informed by Experience

In the previous chapter, we provided numerous suggestions from participants for improving the ACT's response to FV, some of which have been explicitly adopted in our recommendations. Our final recommendation recognises the value and importance of learning from those at the frontline of working and/or living with FV more generally.

In responding to the recommendations of this review, the ACT Government should give due consideration to the suggestions for improvements to legislation, policy and practice provided by those with first-hand professional and/or lived experience of FV (Recommendation 18).

Appendix A: Interview Instrument – Professional Stakeholders

INTERVIEW INSTRUMENT FOR *FAMILY VIOLENCE ACT* REVIEW

Part 1 – Experience with family violence legislation, including the *Family Violence Act 2016* (ACT) (the Act) and *Domestic Violence and Protection Orders Act 2008* (ACT) (the 2008 Act)

1. Can you please tell us about **the nature of your experience with (or knowledge of) the Act** (eg, working in the domestic violence sector; legal practitioner; working in the court)? If direct, please describe (eg, support person in an application). If indirect, please describe (eg, others' observations).
2. For how many years has your work life included **involvement with family violence** legislation in the ACT?
3. Please describe your direct and/or indirect **experience with the 2008 Act**.

Part 2 – Operation of the Act

The email that you received about this project contains a brief summary of the key legislative changes made as a result of the 2016 Act. A number of the questions reflect suggestions made by various stakeholders for reforms to the Act.

In Questions 4-7, we are looking for your views regarding whether the Act has brought about systemic and cultural changes, compared with the 2008 Act. For **each** of the following questions, please describe your views on:

- whether there have been positive and/or negative systemic changes in process as a result of the 2016 amendments;
- the extent of those positive and/or negative changes, on a scale of 1-3 (1=minor change; 2=moderate change; 3=extensive change);
- any specific examples of the changes and their effects; and
- the provision/s of the Act that effected the changes.

4. Please discuss your engagement with the processes involved in the **operation and implementation of the Act**.
5. What are your views on **co-operation and communication between stakeholders who use or have a role in the implementation of the provisions of the Act (including people who have experienced family violence)**?
6. Has there been **cultural change (such as changes in attitudes, values and practices) among stakeholders (including people who have experienced family violence)**?
7. To what extent are **people who have experienced family violence now protected from family violence**?
8. Do you believe that the **after-hours orders** in Part 7 of the Act are sufficient to offer protection to people who have experienced family violence? Please explain.

Part 3 – Additional areas for consideration

Here, we are looking at possible areas for further change. You are not expected to have experience or an opinion on each issue. Please indicate if this is not applicable to you. At the end of the section, you will have the opportunity to express your own ideas for reform.

9. Do you believe that **Police Issued Safety Notices** (PISN), as described in Recommendation 9-1 of the Australian Law Reform Commission report on family violence **should be implemented in the ACT**? Recommendation 9-1 states:

   - State and territory family violence legislation that empowers police to issue protection orders should call these orders 'safety notices' or 'notices' to distinguish them from court orders. The legislation should provide that police may only issue safety notices where it is not reasonable or practicable for: (a) the matter to be immediately heard before a court; or (b) police to apply to a judicial officer for an order (by telephone or other electronic medium). The safety notice should act as an application to the court for a protection order and a summons for the person against whom the notice is issued to appear before the court within a short specified time. The notice should expire when the person to whom it is issued appears in court.

   - Do you see any issues in the ACT for a police safety notice acting as an application to the court for a protection order? Are additional processes required to facilitate this between courts and police in the ACT? Are there any issues for compliance with the *Human Rights Act 2004* (ACT)? Do you see any other implications of implementing this model?

10. In your opinion, do there need to be any changes to the way that **support services manage partner contact**, facilitated by that support service participating in perpetrator programs, when there is an existing family violence order in place prohibiting contact? Please explain why or why not. If you believe changes are needed, what would you recommend?

[NB: The issue here is about perpetrator programs facilitating contact with the victim and/or perpetrator's current partner. Perpetrators will usually be required to provide contact details of current or ex-partners as a prerequisite of participation in the program. Providing such contact details may be construed as being in contravention of an FVO that has a condition requiring the participant not to make contact or cause another to make contact with the applicant under section 43(2) of the Act. The employee of the entity providing the program may also be liable for aiding or abetting the commission of an offence under s 45 of the *Criminal Code 2002*.]

11. Do you believe that the Act should be extended to include **specific reference to other types of abuse as separate forms of family violence**, for example dowry abuse, cultural abuse, coercive control and technology-facilitated abuse? Please explain why or why not. If you believe reference to other types of abuse is needed, what categories would you include?

12. In *An inquest into the death of Andrew Nolan Christie* [2018] ACTCD 1, it was recommended that the **presumption of bail in section 9F of the *Bail Act 1991* (ACT) be amended** to a lower threshold than the existing one of being satisfied that the person poses 'no danger to a protected person while released on bail'. What is your opinion on this? If you believe the threshold should be changed, do you have a view about what it should be?

13. In your opinion, should there be a legislative amendment to **prevent the subpoena of victim impact statements** and **subsequent cross-examination of victims** based on the content of the victim impact statement? Please explain why or why not.

14. In your opinion, should the **existing sexual offence provisions relating to protected confidences be extended to limit disclosure** of:

    a. counselling communications in family violence matters; or

    b. claims for financial assistance compensation.

    Please explain why or why not for each.

15. Please describe any potential issues with, and suggested solutions for, **extending final family violence orders on an interim basis**.

[NB: This refers to the situation where a final FVO has been made, and the applicant is seeking to extend the final order under s 86 of the FV Act. The existing final order may be extended 'on an interim basis' (under s 84 FV Act) in order to 'cover the gap' between expiry of the existing FVO and finalisation of the application for extension under s 86 of the Act. Anecdotally, the 'interim extension' of the final order under s 84 is typically made by a registrar of the Magistrates Court (as per Rule 6251 of the Court Procedure Rules 2006) during the conferencing process between the parties, which takes place to determine whether extension of the FVO can be made by consent].

16. In your opinion, should there be legislative amendment to **limit the court's discretion to impose suspended sentences for breaching suspended sentence orders**, as recommended in the Victims of Crime Commissioner's 2017 Issues Paper (https://www.victimsupport.act.gov.au/__data/assets/pdf_file/0009/1130400/Suspended-sentences-paper-November2017.pdf)? Please explain why or why not. Do you have any other comments on the provisions for suspended sentences in the ACT?
17. What, if any, suggestions do you have for improving **information sharing and managing risk** in cases where there are no criminal charges?
18. What, if any, other potential reforms to the **provisions** of the Act do you believe could support preventing and responding effectively to family violence?
19. What, if any, other potential changes to the **implementation** of the Act do you believe could support preventing and responding effectively to family violence?
20. What, if any, changes should be made to the **existing protection framework**?
21. Are there any other comments you would like to make?

Appendix B: Participant Information Sheet – Professional Stakeholder

Researcher:
My name is Lorana Bartels and I am a Professor of Criminology in the College of Arts and Social Sciences at the Australian National University (ANU). Patricia Easteal AM, who owns Legal Light Bulbs and is an Emeritus Professor at the University of Canberra, and Shannon Buglar, who is a research assistant, will also conduct research on this project.

Project Title:
Review of the implementation of the *Family Violence Act 2016* (ACT)

General Outline of the Project:
Description and Methodology: We are conducting a review of the *Family Violence Act 2016* (ACT) (the Act) on behalf of the ACT Government. The purpose of the review is to identify:

- whether the Act is operating as intended;
- the extent to which the commencement of the Act has effected cultural and/or systemic change; and
- the potential for further changes to legislation to support best practice in preventing and responding to family violence.

Participants: We intend to interview approximately 50 professional stakeholders involved in the implementation and operation of the Act (eg, justice and family violence stakeholders). We also propose to interview up to 10 people who have experienced family violence.

Use of Data and Feedback: The data will be used to produce a report for the ACT Government. A summary will be available at https://csrm.cass.anu.edu.au. The data may also be used to develop peer-reviewed published articles and/or conference presentations.

Project Funding: This research is funded by a consultancy from the ACT Government.

Participant Involvement:

- **Voluntary Participation & Withdrawal**: Your participation in this research is voluntary and you may decline to take part or to withdraw from the research without adverse consequences at any time before the final report is completed. Participation is not a requirement or expectation related to your employment. Within the research, you may also decline to answer any question. If you withdraw, the data you have provided prior to withdrawal will be destroyed and not used.
- **What does participation in the research entail?** You are invited to take part in a face-to-face interview about your experiences with the operation of the Act. A copy of the proposed questions will be provided to you before the interview. With your consent, we will record the interview so that it can be accurately transcribed.
- If you prefer, you have the option of undertaking the interview by telephone/Skype.
- If you prefer an email interview, you will have the opportunity to express further ideas after the initial email and if you have any questions or concerns, you may contact a member of the research team to assist. However, you should bear in mind that email is an inherently insecure method of communication.
- **Location and Duration**: Interviews are expected to last about 60 minutes and will be conducted at your office or another appropriate public place (eg, at an office at the ANU).
- We will provide a copy of the draft report and an opportunity for you to respond by email, telephone and/or face-to-face to confirm the accuracy of information, comment on report analysis and findings, and provide any other comments.
- **Risks**: The research carries little risk, although you may feel uncomfortable or distressed if you have had negative experiences with the operation of the Act. You will be provided with the contact details of support services if you do experience any distress.

- There is also a risk that, despite our best efforts to keep your identity confidential, you may be identified through the information.
- **Benefits**: It is unlikely that you will personally benefit from participation in this research. However, your contribution will improve our understanding of the operation of the Act and may have broad benefits in terms of reducing family violence, especially violence against women and children.

Confidentiality:

- We will keep your identity confidential as far as allowed by law. Access to the data you provide will be restricted to the research team and identifying details will be stored separately from the rest of the research data.
- No information will be reported that allows for identification of individuals, but there is some risk that responses by individuals will be identifiable, as the ACT is small and interconnected community. The researchers will make every effort to not attribute or allow for the identification of particular responses to any individual participant (eg, avoiding details as to participants' employer, length of service etc). A list of stakeholder organisations consulted will be included in the report, but comments will not be attributed to any individual or, unless necessary to do so, any specific organisation (for example, to clarify that particular viewpoints were shared by family violence service providers but not lawyers).

Privacy Notice:

In collecting your personal information within this research, the ANU must comply with the *Privacy Act 1988*. The ANU Privacy Policy is available at https://policies.anu.edu.au/ppl/document/ANUP_010007 and it contains information about how a person can:

- Access or seek correction to their personal information;
- Complain about a breach of an Australian Privacy Principle by ANU, and how ANU will handle the complaint.

Data Storage:

- **Where**: Data will be securely stored on password-protected computers in the College of Arts and Social Sciences at the ANU and only anonymised versions of the interview transcripts will be made available to Easteal and Buglar. Physical records will be kept in a locked filing cabinet in Professor Bartels' office.
- **How long**: All research data will be retained and securely stored for at least five years following publications arising from the research and will then be destroyed.

Queries and Concerns:

- **Contact Details for More Information**: Any requests for information or queries regarding the study should be directed to Lorana.Bartels@anu.edu.au (+61 2 6125 1279).
- **Contact Details if in Distress**: If you feel distressed by any questions, you should contact the Domestic Violence Crisis Service (6280 0900) or Lifeline (13 11 14).

Ethics Committee Clearance:

The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2019/410). If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager
The ANU Human Research Ethics Committee
The Australian National University
Telephone: +61 2 6125 3427
Email: Human.Ethics.Officer@anu.edu.au

Appendix C: Written Consent – Professional Stakeholder

Review of the implementation of the *Family Violence Act 2016* (ACT)

I have read and understood the Information Sheet you have given me about the research project: **Review of the implementation of the *Family Violence Act 2016* (ACT)**. I have had any questions and concerns about the project addressed to my satisfaction.

I agree to participate in the project. YES ☐ NO ☐

I agree to this interview being audio-recorded. YES ☐ NO ☐

I agree to my de-identified responses being used for analysis in a report to the ACT Government.

YES ☐ NO ☐

I agree to my de-identified responses being used in academic publications.

YES ☐ NO ☐

Signature:…….

Date:…….

Appendix D: Interview Instrument – Lived Experience Stakeholder

INTERVIEW INSTRUMENT FOR *FAMILY VIOLENCE ACT* REVIEW

Lived experience stakeholders

In answering the following questions, if you need to mention details or names of people in order to explain your answer, that's fine. We will remove or change names in order to de-identify responses.

1. Could you please describe the **experiences you've had with the family violence order scheme in general**?
2. Please tell us about your experiences with any of the following:
    - **After-hours Orders**;
    - **interim orders**;
    - the **duration of orders**; and
    - **ease of use** of the family violence order scheme.
3. In your opinion, as someone who has experienced family violence, do you think that the current laws for responding to family violence should be changed to deal with a broader range of types of abuse, for example, **dowry abuse, cultural abuse, coercive control** or **technology-facilitated abuse**?
4. Could you please describe your experience(s) with information sharing between family violence agencies, for example in the following contexts:
    - **between separate agencies**;
    - continuity of case management **across related services**;
    - **across the justice system** as a whole; and
    - access to **culturally-specific** services?
5. Could you please describe any experiences you have had where the **perpetrator breached a suspended sentence order**? How did such a **sentencing outcome or other types of sentences impact on you**?
6. Is there **anything else** you would like to tell us about your experiences with the family violence order scheme?

Appendix E: Participant Information Sheet – Participant with Lived Experience

Researcher:
My name is Lorana Bartels and I am a Professor of Criminology in the College of Arts and Social Sciences at the Australian National University (ANU). Patricia Easteal AM, who owns Legal Light Bulbs and is an Emeritus Professor at the University of Canberra, and Shannon Buglar, who is a research assistant, will also conduct research on this project.

Project Title:
Review of the implementation of the *Family Violence Act 2016* (ACT) (the Act)

General Outline of the Project:
Description and Methodology: We are conducting a review of the Act on behalf of the ACT Government. The purpose of the review is to identify:

- whether the Act is operating as intended;
- the extent to the Act has brought about cultural and/or systemic change; and
- the potential for further changes to legislation to support best practice in preventing and responding to family violence.

Participants: We intend to interview approximately 40-50 professional stakeholders involved in the implementation of the Act. We also propose to interview up to 10 people who have experienced family violence, who have been invited by legal and/or family violence support services to contact the researchers if they wish to participate.

Use of Data and Feedback: The data will be used to produce a report for the ACT Government. A summary will be available at https://csrm.cass.anu.edu.au. The data may also be used to develop peer-reviewed published articles and/or conference presentations.

Project Funding: This research is funded by a consultancy from the ACT Government.

Participant Involvement:
Voluntary Participation & Withdrawal: You do not have to participate if you do not want to. It is entirely up to you. You can pull out of the research at any point before November this year, when we will be writing the final report. You don't have to tell us why you don't want to participate any more. You can also choose not to answer any question during the interview. That is completely fine. Your decision whether to participate or answer any particular questions will not impact on you receiving to having access to any services.
To withdraw, all you have to do is contact me, using the contact details listed in this sheet. If you withdraw, we will destroy any information that you have provided.

What does participation in the research entail?
You are invited to take part in a face-to-face interview about your experiences with the operation of the Act. A copy of the proposed questions will be provided to you before the interview. You can ask for a support person to be present at the interview. With your consent, we will record the interview so that it can be accurately transcribed.

Location and Duration:
Interviews are expected to last about 60 minutes and will be conducted at a safe, public place, for example, at a support agency or the ANU.

We will provide a copy of the draft report and an opportunity for you to respond by email, telephone and/or face-to-face to confirm the information you have provided is right. You can also comment on the report analysis and findings and provide any other comments.

Risks:
The research carries some risk of psychological harm, as you may feel uncomfortable or distressed discussing your experiences of the Act. If you think that answering these questions would be very distressing and might make you unwell and/or that participating in this study may be unsafe for you, we advise that you do not participate in the study. Remember, you can ask to stop the interview at any time or choose not to answer any question that we ask.

If we become concerned about anything, we may stop the interview. With your permission, we will also check in with you after the interview to make sure you are OK. If you feel upset, we will encourage you to contact a support service, like the Domestic Violence Crisis Service (DVCS). If you need any kind of help or support, it is available for you. You will be provided with the contact details of support services if you do experience any distress.

There is also some risk of social harm, as you may be concerned about whether your answers will have an impact on the services you receive from government or other agencies, and legal harm, if you are or have been involved in legal proceedings or if future legal action is taken against you in relation to the issues discussed within this research. There is also a small risk that the research materials could be subpoenaed in future legal action and/or that, despite our best efforts to keep your identity confidential, you may be identified through the information. As we explain below (see under 'Confidentiality'), we will take steps to reduce these risks.

Benefits:
Some people find it helpful to tell their story in their own words about experiences of this nature, although this does not happen for everyone. However, sharing your experiences will improve our understanding of the operation of the Act.

Reimbursement:
We will pay you back for any money you spend on participating in the interview (eg, parking, bus ticket, childcare).

Confidentiality:
We will keep your identity confidential as far as allowed by law. Access to the information you provide will be restricted to the research team and we will keep identifying details separate from the rest of the research data.

The protection of your privacy is very important. Your name and any other information that might identify you (e.g. names of other people, places of work, school names etc) will not be used in any research that comes out of this study. None of your personal details will be given to the ACT Government, which is funding this project. The information you provide to us will not be shared with other agencies with which you have dealings (unless you choose to have a support person from a particular agency present during the interview) and so there is no risk that the information could be used in a manner detrimental to you by any agency.

With your consent, we will record your interview. The recording will be used so we can create a correct written account of what you said. Once we have created a written record of the interview, the electronic copy will be destroyed. No identifying information will be included in written interview records. If you describe a specific incident with the police or the courts that could identify you, we will not use these details and will make it unlikely that the incident could be identified.

We won't tell anyone what you tell us during the interview. However, if you tell us something that makes us think it is likely that you or someone else will be seriously harmed in the future or you are or have been involved in illegal activity, we may have to tell someone else. So, you should avoid telling us anything like that. If we think you are going to tell us something that we may have to pass on, we will stop the interview.

There is also a risk that we will need to provide our research materials under a legal order, for example, if you have a case in the Family Court.

Privacy Notice:
In collecting your personal information within this research, the ANU must comply with the *Privacy Act 1988*. The ANU Privacy Policy is available at https://policies.anu.edu.au/ppl/document/ANUP_010007 and it contains information about how a person can:

- Access or seek correction to their personal information;
- Complain about a breach of an Australian Privacy Principle by ANU, and how ANU will handle the complaint.

Data Storage:
Where: Data will be securely stored on password-protected computers in the College of Arts and Social Sciences at the ANU and only anonymised versions of the interview transcripts will be made available to Easteal and Buglar. Physical records will be kept in a locked filing cabinet in Professor Bartels' office.
How long: All research data will be kept and securely stored for at least five years following publications arising from the research and will then be destroyed.

Queries and Concerns:
Contact details for more information: Any requests for information or queries regarding the study should be directed to Lorana.Bartels@anu.edu.au (+61 2 6125 1279).
Contact details if in distress: If you feel distressed by any questions, you should contact one of the services listed on the next page.

Ethics Committee Clearance:
The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Protocol 2019/410). If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager
The ANU Human Research Ethics Committee
The Australian National University
Telephone: +61 2 6125 3427
Email: Human.Ethics.Officer@anu.edu.au

Support services

Police/ambulance/fire: 000
- For assistance in life-threatening or emergency situations only

Lifeline Australia: 13 11 14 or visit: https://www.lifeline.org.au.
- A provider of general and emergency counselling, information and referrals

Domestic Violence Crisis Service: 02 6280 0900
- Provides crisis intervention services, as well as programs for both women experiencing family violence and male perpetrators. Based in Canberra.

Relationships Australia: 1300 364 277
- A provider of relationship support services for individuals, families and communities

National Sexual Assault and Domestic Family Violence Counselling Service (1800 RESPECT): 1800 737 732 or go to the https://www.1800respect.org.au/
- Provides counselling, information, and referrals for situations related to sexual and family violence.

Family Relationship Advice Line: 1800 050 321
- Provides information on family relationship issues and advice on parenting arrangements after separation. They can also provide referrals to local services.

Family Drug Support Australia: 1300 368 186
- A telephone support service for users, families, and carers in crisis due to alcohol and other drug use.

SANE Australia: 1800 187 263
- Information about mental illness, treatments, where to go for support and help carers.

ACT Access Mental Health: 1800 629 354 or 6205 1065
- 24/7 mental health emergency access and support service

Social Work Services: 13 28 50 (available Mon-Fri 8am-5pm)
- Provides information, support and short-term counselling for a range of issues, including personal and family crisis, mental health concerns, family violence, health and legal services and emergency accommodation.

Parentline ACT: 02 6287 3833 (available Mon-Fri 9am-5pm)
- Confidential counselling service for parents and carers. They can offer counselling, information and referrals.

Winnunga Nimmityjah Aboriginal Health Service: 02 6284 6222 (available Mon-Fri 9am-5pm)
- Provides physical and mental health support services to Indigenous-identified Canberra residents.

Appendix F: Written Consent – Participant with Lived Experience

Review of the implementation of the *Family Violence Act 2016* (ACT)

I have read and understood the Information Sheet you have given me about the research project: **Review of the implementation of the *Family Violence Act 2016* (ACT)**. I have had any questions and concerns about the project addressed to my satisfaction.

I agree to participate in the project. YES ☐ NO ☐

I agree to this interview being audio-recorded. YES ☐ NO ☐

I agree to my de-identified responses being used for analysis in a report to the ACT Government.

YES ☐ NO ☐

I agree to my de-identified responses being used in academic publications.

YES ☐ NO ☐

Signature:…….

Date:…….

Appendix G: Timeline and Project Plan

Milestone	**Actions**	Date
Stakeholder list compiled	Researchers develop list of stakeholders with email addresses; submit to JACS; JACS check list and provide missing key contacts.	1 - 14 June
Ethics application submitted	Submission of ethics application, information sheets and consent form; respond to any issues raised by ANU Human Research Ethics Committee (HREC).	1 - 18 June
Interview instrument developed	Researchers develop questions based on contract; send to JACS for feedback; submit to Aboriginal and Torres Strait Islander representatives for input.	5-14 June
Research assistant hired	Employ a research assistant (Dr Shannon Dodd (née Buglar)) to assist in data analysis.	20 June
Recruitment of respondents	Emails sent to all stakeholder contacts. This email will include information sheet and consent form and request for stakeholder to contact researchers or forward to delegate to contact researchers. Upon contact from prospective interviewer, a date and location will be set. People with lived experience will be accessed through FV and legal services.	late August
Consultation with stakeholders	Approximately 50-60 face-to-face interviews will take place, unless interviewee prefers phone or email (this option will only be available for professional interviewees). Verbal interviews will be audio-recorded (unless interviewee does not consent to recording).	2 Sept-1 Nov
Transcription of interviews	Interviews will be transcribed as completed.	2 Sept-8 Nov
Analysis	Interviews will be analysed thematically, as well as identifying different perspectives across respondent cohorts.	4 Nov-13 Dec
Draft initial report	Researchers will draft the interim report, based on the analysis of the interview material, using direct quotes to document the key themes.	13 Dec-31 January
Draft report disseminated	Draft report will be emailed to all interviewees and JACS for feedback.	3 Feb
Re-engagement with stakeholders and JACS	Stakeholders will be re-engaged by email, telephone and/or face-to-face to confirm that all relevant issues have been raised/addressed.	4-21 Feb
Final report	Researchers will integrate feedback into the final report and submit to JACS.	6 March