

40TH PARLIAMENT



Community Development and  
Justice Standing Committee

Report 8

OPENING DOORS TO JUSTICE

*Supporting victims by improving the management of family and  
domestic violence matters in the Magistrates Court of Western Australia*

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Presented by  
Mr P.A. Katsambanis, MLA

August 2020

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Published by the Parliament of Western Australia, Perth.  
August 2020.  
ISBN: 978-1-925724-62-2

(Series: Western Australia. Parliament. Legislative Assembly. Committees.  
Community Development and Justice Standing Committee. Report 8)

328.365

# **Community Development and Justice Standing Committee**

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## **Opening doors to justice**

**Supporting victims by improving the management  
of family and domestic violence matters in the  
Magistrates Court of Western Australia**

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Report No. 8

Presented by

**Mr P.A. Katsambanis, MLA**

Laid on the Table of the Legislative Assembly on 13 August 2020



## **Inquiry Terms of Reference**

The Community Development and Justice Standing Committee will inquire into and report on the Magistrates Court of Western Australia's management of matters involving family and domestic violence. In particular, the Committee will consider:

1. The challenges experienced by the Magistrates Court of Western Australia and court users in matters involving family and domestic violence, including:
  - a. Ease of access
  - b. Cost of access
  - c. Access to advice, support and programs
2. How other jurisdictions manage matters involving family and domestic violence, including examination of non-adversarial models.
3. Ways to improve the efficiency and effectiveness of the Magistrates Court of Western Australia's management of matters involving family and domestic violence.



## Chairman's Foreword

In undertaking its inquiry into how the Magistrates Court of Western Australia (MCWA) manages matters involving family and domestic violence, the Committee's intent was to identify areas for improvement in the way the Magistrates Court of Western Australia manages matters involving family and domestic violence, whilst being cognisant not to impinge on the integrity and institutional independence of the court.

I am grateful for the cooperation and openness of the magistrates and staff of the Magistrates Court of Western Australia when providing information and evidence throughout the course of this inquiry, in particular the Chief Magistrate. I have seen first-hand the excellent work that the court can do even under immense pressure and in difficult circumstances. Through the recommendations made in this report, we hope to support and improve the way the court does business to contribute to improved outcomes for court users.

The overwhelming majority of evidence to the inquiry re-affirmed the well-established fact that victims of family violence are overwhelmingly women, and that perpetrators of family violence are generally men. The Committee also acknowledges that there are a broad range of relationships in which domestic violence can occur, including same-sex relationships, parent and child, and between siblings or extended family.

Aboriginal people are vastly overrepresented as victims of family violence. An Ombudsman investigation in 2015 found that, although Aboriginal and Torres Strait Islander people made up only 3.1% of the state's population, they comprised 33% of victims of FDV offences. However, Aboriginal women applied for only 11% of FDV-related restraining orders. It was particularly upsetting to hear that Aboriginal women are 45 times more likely to be victims of family and domestic violence than non-Aboriginal women.

As with every person and organisation across the State, the Committee's work was affected by the COVID-19 pandemic. The Committee's visit to the Barndimalgu Aboriginal Family Violence Court in Geraldton in early April was cancelled due to public health concerns and increasing restrictions on movement. The Committee was disappointed that it was not able to see the workings of this court first-hand, as it had heard positive feedback about the court outcomes. The Committee looks forward to the outcome of the scheduled review, due to be commenced later this year.

Throughout our report, we have made recommendations focused on improving the justice response to family violence affecting Aboriginal people. I reiterate the importance of Aboriginal people being fully involved in all decision making, and staffing court, legal and support services.

A key theme throughout the report is that the court can become more accessible to court users if the court itself, and related legal and support services, is appropriately resourced.

The Committee received consistent evidence that the court was taking too long to hear and finalise Family Violence Restraining Order (FVRO) matters. Delays are problematic for

numerous reasons, including that court users can be put off applying for an FVRO, both applicants and respondents can experience growing emotional distress as matters remain unresolved, and parties' views can become entrenched, making it difficult for issues to be resolved.

While there are some options to reduce delays, such as greater use of videolink technology in regional areas, ultimately the court needs more magistrates, and associated staff, to hear matters promptly. In recent years there has been significant growth in the number of FVRO applications made to the court, without a corresponding increase in resources. Increasing the number of magistrates and staff will have the biggest effect on reducing time to trial.

Sufficiently resourcing legal services will also improve accessibility, reduce delays and provide much needed support for court users. Legal representation is essential to the FVRO process, yet at present there are insufficient free or low cost legal services available for applicants, and such services are almost completely unavailable for respondents. Appropriate legal advice can empower a person experiencing FDV to make choices and exercise their rights, improve parties' decision making, and help court users understand the court process. Importantly, making legal services available for respondents can potentially diffuse tension, reduce FVRO breaches and help matters reach a timely resolution.

Similarly, support services are critically important for people affected by family violence. Not only can appropriate services support a person through court processes, but the court itself can be a touchpoint for services providers to engage with families affected by FDV, and provide them with additional support to address related factors and underlying causes of FDV, such as alcohol and drug abuse, mental health issues, homelessness and financial security. It is concerning that both the Family Violence Service and Victim Support Service in the metropolitan area, and the Victim Support and Child Witness Service in regional and remote areas, are underfunded and unable to provide the level of support needed by their clients.

Family violence matters are core business for the MCWA, so it is imperative that all magistrates are knowledgeable about the dynamics of FDV, including how it may manifest in different ways depending on the type of relationship or the victim or perpetrator's cultural background. A lack of knowledge about FDV can lead to inconsistency in magistrates' decision making. Magistrates, and staff, need to attend ongoing training, and need to be committed to implementing that training in their decision making and work.

In the course of their work, magistrates and court staff are potentially exposed to a significant amount of traumatic information. This can lead to vicarious trauma, which can contribute to mental health issues and burn out at work. It is important that magistrates and staff are supported, through access to training and counselling, to recognise and respond to the effects of vicarious trauma, including assisting colleagues experiencing distress.

The Western Australian Parliament has recently passed legislation which allows for the introduction of a form of alternative dispute resolution, known as conferencing, into the FVRO process. This process is partly based on the conferencing model of the ACT Magistrates Court, which we were able to visit during our East Coast travels in February 2020. The



Committee spoke with various stakeholders in the ACT who provided comprehensive feedback about what works well, and not so well, in this process. I am generally in favour of introducing optional conferencing as a step in the FVRO process, although it is important to remember that it is not a panacea. It is an important additional tool in the toolkit to respond to and reduce family and domestic violence.

The Committee was dismayed by the lack of transparency in the evaluation undertaken of the previous Family Violence Court, which dealt with criminal matters involving FDV. The narrowly focused review led to the replacement of the Family Violence Court with the Family Violence List. It has been difficult for the Committee to ascertain what the shift in models has achieved, particularly as there seems to be no clear objectives nor framework for the Family Violence List.

The Family Violence List is due to be evaluated in 2021. The Committee recommends that the evaluation is used as an opportunity to set objectives, identify indicators for success, and establish a clear framework to guide the Family Violence List's operations into the future. Without doing so, it will be difficult to identify the potential benefits of the model.

There should be an increased focus on implementing best practice and building an evidence base for the effectiveness of court-based responses to FDV, including the Family Violence List model, behaviour change programs and FVRO conferencing. These responses should be independently evaluated, with the outcomes released upon conclusion of the evaluation so that the basis of future decision making is clear.

The Committee's travels to Melbourne, Canberra, Brisbane and the Gold Coast in February 2020 gave it the opportunity to explore how other court systems are structured to respond to matters involving FDV. Following its 2015 Royal Commission into Family Violence, the Victorian Government's justice response to family violence is considered nation leading. Its integrated court response is aspirational. It would take a significant whole of government approach, and major expenditure, to replicate this landmark systemic change in Western Australia. In Queensland, Specialist Family Violence Courts have been established to deal with related civil and criminal family violence matters.

It is clear that better integration of related civil and criminal family violence matters within the MCWA has significant potential to reduce re-traumatisation and improve outcomes for victims of FDV. It can assist in the oversight and accountability of perpetrators undertaking behaviour change programs and can also provide time and costs savings within the court system. Regardless of the structure of such integration, the Magistrates Court of Western Australia should establish an overarching plan to manage all proceedings involving family violence. This plan should be developed and overseen by a strategic oversight group of stakeholders at a state level, and implemented by local oversight groups at an individual court level.

I would like to thank the current and former members of the Committee for their enthusiastic and collaborative approach to the inquiry. I would also like to thank all of the stakeholders who so willingly participated in the inquiry. As always, I offer special thanks to

the committee staff who have worked tirelessly, efficiently and effectively to help the Committee throughout the entire process.

The findings and recommendations of this inquiry will unfortunately not stop family and domestic violence. But the implementation of the recommendations will go a long way towards opening the doors of justice to better support and protect victims of family and domestic violence as they interact with the Magistrates Court of Western Australia, as well as holding perpetrators accountable for their actions and supporting them to change their behavior.

A handwritten signature in blue ink, appearing to be 'P.A. Katsambanis', with a large, sweeping initial 'P'.

MR P.A. KATSAMBANIS, MLA  
CHAIRMAN

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## Executive Summary

**T**hanks to the tireless work of survivors and advocates, the community is increasingly acknowledging and confronting family and domestic violence. FDV can occur in many forms, in all kinds of family and personal relationships, and in all sections of society—although women are overwhelmingly more likely to be the victims of violence perpetrated by men, and Aboriginal people, especially women, experience FDV at significantly higher rates than other Australians.

FDV is a complex problem that requires a holistic response. Courts are an important part of this response, as they have a unique ability to fulfil many roles simultaneously—supporting and protecting victims, holding perpetrators accountable for their actions and supporting them to change their behaviour.

The Magistrates Court of Western Australia (MCWA) deals with a significant volume of FDV matters, including Family Violence Restraining Orders (FVROs) and FDV criminal matters. In inquiring into the MCWA's management of matters involving FDV, the Committee looked at both the processes of the court, as well as complementary legal and support services. The Committee also considered the practices of other jurisdictions, and the findings and recommendations of previous relevant inquiries, particularly the Law Reform Commission of Western Australia's 2014 report, *Enhancing Family and Domestic Violence Laws*.

### **Increased judicial resourcing is the key tool to improving timeliness**

Achieving timely finalisation of FDV matters is a constant challenge for the MCWA, particularly in the face of a steadily increasing caseload. Delay is particularly problematic in FDV matters as a victim's safety may be at stake and both parties may experience significant emotional distress.

Resourcing is the primary factor that affects the MCWA's ability to deal with FDV matters efficiently, particularly in suburban and regional court locations. Although procedural improvements can assist to a degree, appointing additional magistrates and associated staff is ultimately the most effective way to reduce time to trial.

### **Trained magistrates and staff are integral to court accessibility**

Magistrates and MCWA staff must be knowledgeable about the unique dynamics of FDV in order to respond appropriately and consistently to the needs and vulnerabilities of court users.

All magistrates in Western Australia currently receive some FDV training, and the selection criteria for new magistrates were recently amended to require that applicants demonstrate an understanding of FDV dynamics. However, judicial education should be extended and ongoing, particularly for regional and specialist FDV magistrates. Strong leadership is important to foster cultural change in attitudes towards both formal judicial education and FDV generally.

Court staff are at the front line of the MCWA. Their response to FDV-related matters, especially during a victim's initial interaction with the court, can affect a court user's experience of the court process and their ongoing willingness to engage. Specific FDV and cultural awareness training will increase the capacity of staff to respond appropriately to court users and promote accessibility.

The volume and nature of matters involving FDV can, understandably, take a toll on magistrates and MCWA staff. Their mental health and wellbeing should be prioritised through the provision of peer support programs and vicarious trauma training, and the development of a wellbeing plan.

### **Access to legal services and support services will benefit both the court and its users**

Parties to FDV matters in the MCWA often have no access to legal advice or representation. This is because publicly funded services have limited availability in the face of significant demand, and the cost of private services is often prohibitive.

Similarly, access to court-based support services is limited, particularly in regional locations. There are virtually no support services for FVRO respondents, despite there being widespread support for this kind of service, including amongst organisations that advocate for victims.

When parties are legally represented the court process is generally faster and less confusing, and results in better outcomes and compliance with court orders. Supported parties are also able to better engage with the court process, which improves efficiency.

Funding for low-cost and free legal services should be increased, particularly for regional areas and for specialist Aboriginal legal services. A comprehensive court support service for both FVRO applicants and respondents should also be available, with particular focus on providing culturally appropriate support services for Aboriginal people and culturally and linguistically diverse communities.

The MCWA is an important touchpoint for people to access broader support services to address issues caused by or contributing to FDV. Co-locating multidisciplinary services in hubs at or near court locations would allow for easy access, referral and coordination.

### **Alternative dispute resolution can be done safely and offers many benefits**

Alternative dispute resolution (ADR) methods may be beneficial in resolving some matters involving FDV outside the courtroom, provided that appropriate safeguards are incorporated into the process. For victims, the ability to choose such an option may be empowering and less traumatic than pursuing an uncertain outcome in traditional, adversarial court proceedings. ADR is also less expensive than litigation, both for parties and the court, and resolutions can be reached more quickly.

The recently passed *Family Violence Legislation Reform Act 2020* allows for optional 'shuttle' conferencing in the FVRO process. The conferencing will be facilitated by trained registrars, who will have a key role in mitigating the risk of power imbalance. The Committee considers

shuttle conferencing to be a useful alternative to adversarial hearings in resolving contested FVRO applications.

Funding should be provided to allow both applicants and respondents in FVRO conferencing to receive legal advice and representation. This not only safeguards against further coercion and control, but will also significantly increase the likelihood of the parties successfully reaching a resolution.

### **The FVRO process can be further improved to promote accessibility and efficiency**

FDV victims may be discouraged from seeking an FVRO if the process is confusing, onerous or traumatic. Various process improvements, some of which are free or low cost, will improve accessibility for parties and deliver efficiencies for the court.

There should be a greater range of options available for lodgement of FVRO applications. Recent reforms have allowed for some applications to be lodged online via approved organisations, including Legal Aid. However, there would be benefits in expanding this to allow direct online lodgement by the applicant. The Western Australia Police Force should also be adequately resourced to take full advantage of the legislative provisions which allow them to apply for FVROs on behalf of victims.

The Committee considers while initial *ex parte* hearings can create challenges for respondents, allowing this option is necessary to reduce the risk of harm to victims. Challenges for respondents can be minimised by other process and service improvements, such as training police to explain the effect of the interim order when it is served.

By creating a complaints mechanism for court users, the MCWA will also be able to monitor feedback about the court process and develop ongoing process improvements.

### **Specialist FDV courts need defined objectives to be truly effective**

Evidence received by the Committee indicates that specialist FDV courts are well placed and have the capacity to deal effectively with matters involving FDV because they have dedicated trained staff, extra support for victims, and monitoring and behaviour change programs for offenders.

Specialisation around FDV matters has been utilised in Western Australian courts in different forms over the years. The operating model of these courts has changed over time, although it is difficult to determine both the intended effects of the changes and whether these have been achieved. This is because of several factors: there has not yet been an evaluation of the current operating model, there are no clearly defined objectives for the court, and previous evaluations have been conceptually limited. Until clear objectives are set for the court, its full benefits will not be able to be measured or realised.

### **Management of FDV criminal matters can be improved**

Specialist FDV courts use case management and information sharing to more intensively manage criminal FDV matters. This is time consuming and resource intensive, but can offer a

range of benefits to families experiencing FDV. Inadequate resourcing compromises the court's ability to devote sufficient time to case management.

Specialist FDV courts also have access to Bail Risk Assessment reports, which provide key information on the risk the accused poses to the victim. These should be available to all magistrates considering bail in FDV matters. Conditional bail programs should also be available to create an opportunity for rehabilitative intervention at an early stage in the court process.

Resources should be directed to evaluate behaviour change programs and determine their effectiveness. There should also be scope for more flexible programs to cater to different cohorts of offenders with particular needs.

There is significant scope to expand specialist FDV courts and programs for Aboriginal offenders. The outcomes of the planned evaluation of the Barndimalgu Aboriginal Family Violence Court in Geraldton could be used as a blueprint to co-design other culturally safe court responses with Aboriginal communities.

#### **Integrating related matters in different jurisdictions will improve consistency and minimise duplication**

Matters involving FDV can cross over into several different court jurisdictions both within and beyond the MCWA, including the Family Court of Western Australia (FCWA) and the Children's Court of Western Australia (CCWA). This can be confusing for parties, re-traumatising for victims and result in inconsistent outcomes.

While full integration of the various jurisdictions is not feasible, achieving better integration between these jurisdictions would reduce these negative effects and improve court efficiency. Within the MCWA, this would be achieved by integrating civil and criminal matters in specialist FDV courts, or by creating an overarching plan for managing FDV matters that coordinates processes between the civil and criminal jurisdictions.

Some practical and legislative changes are already underway, which should enhance information sharing between the MCWA and FCWA and minimise inconsistencies. However, there is still scope for better integrating matters that overlap in the MCWA and CCWA.

#### **Improving court infrastructure will promote efficiency**

Many existing court buildings are not suitable to handle the volume of matters listed. Limitations on court accommodation can compromise confidentiality and victim safety. Lack of child-minding services may also limit access to the MCWA and delay or disrupt court proceedings.

Design features such as multiple entrances, break out rooms, and separate waiting areas, would facilitate access to justice and improve user experiences and safety.

**An integrated government response is required**

Coordination and information sharing across government agencies is key to responding effectively to FDV. Agency leaders are committed to overcoming information 'silos', but this must be supported by a clear framework for proactive information sharing and improved IT systems. Family and Domestic Violence Response Teams are a sound model for providing a collaborative, multi-agency response to FDV incidents. An upcoming evaluation of this model will identify further improvements to be made.





## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Community Development and Justice Standing Committee directs that the Premier, Attorney General, Minister for Police, Minister for Prevention of Family and Domestic Violence, Minister for Community Services, Minister for Mental Health and Minister for Citizenship and Multicultural Interests report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



# Findings and Recommendations

## Chapter 2 – What family and domestic violence is, and who it affects

### Finding 1

Page 15

Women are significantly more likely to be victims of family and domestic violence, and men are more likely to be perpetrators of family and domestic violence.

### Finding 2

Page 16

Aboriginal Western Australians continue to be significantly overrepresented as victims of family and domestic violence.

### Finding 3

Page 18

Certain cohorts may be more vulnerable to family and domestic violence and experience it at higher rates. Further research into the prevalence of family and domestic violence in these vulnerable cohorts would better inform targeted responses.

## Chapter 3 – Greater resourcing can improve timeliness

### Finding 4

Page 19

The Magistrates Court of Western Australia is taking too long to hear and finalise Family Violence Restraining Order matters.

### Finding 5

Page 20

There are significant negative effects for the Magistrates Court of Western Australia and court users caused by delays in hearing and finalising Family Violence Restraining Order matters.

### Finding 6

Page 23

Current judicial resources in the Magistrates Court of Western Australia and the Children's Court of Western Australia are insufficient to deal with the significant number of applications for Family Violence Restraining Orders.

### Recommendation 1

Page 23

That the Attorney General ensures funding for the appointment of additional magistrates in the Magistrates Court of Western Australia and Children's Court of Western Australia, as required to deal with applications for Family Violence Restraining Orders in a timely manner in both metropolitan and regional Western Australia.

## **Chapter 4 – Specialist, experienced and trained magistrates and staff improve accessibility**

### **Finding 7**

**Page 28**

Some magistrates lack knowledge about the dynamics of family and domestic violence, and this can contribute to inconsistent decision making.

### **Finding 8**

**Page 28**

Ongoing training about the dynamics of family and domestic violence, including how it can present differently in different cohorts, can improve magistrate decision making in family and domestic violence related matters.

### **Recommendation 2**

**Page 28**

That the Attorney General, in consultation with the Chief Magistrate, funds the development of a comprehensive and ongoing family and domestic violence training program for all magistrates to assist them in their decision making in family and domestic violence related matters. This ongoing training program should be mandatory for all magistrates that deal with family and domestic violence matters. The training should include information on how family and domestic violence can present differently amongst different cohorts.

### **Finding 9**

**Page 28**

For family and domestic violence training to be truly effective, and to be consistently implemented in practice, it must be championed by court leadership to demonstrate the value of engaging in ongoing training and putting this knowledge into effect.

### **Finding 10**

**Page 29**

Prospective magistrates are now required to have an understanding of the dynamics of family and domestic violence prior to appointment. However, it is unclear how this requirement is interpreted and weighted as part of the magistrate recruitment process.

### **Finding 11**

**Page 30**

There are significant benefits to magistrates specialising in matters involving family and domestic violence, including greater knowledge of the dynamics of family and domestic violence and related law, and the ability to more effectively manage such matters. Specialist family and domestic violence magistrates can also provide leadership and support to non-specialist magistrates.

### **Recommendation 3**

**Page 30**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who specialise in family and domestic violence hear family and domestic violence matters wherever possible.

**Recommendation 4****Page 31**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who specialise in family and domestic violence matters are supported to become experts in the area by participating in additional training. This should take the form of a formalised accreditation process.

**Recommendation 5****Page 31**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who are appointed to regional and remote areas have undertaken the appropriate family and domestic violence training and accreditation.

**Finding 12****Page 32**

Magistrates Court of Western Australia staff are the front line response to court users experiencing family and domestic violence, and must be sufficiently trained to perform this role.

**Recommendation 6****Page 32**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that sufficient funding is available to provide all Magistrates Court of Western Australia staff with initial and ongoing training on the nature and dynamics of family and domestic violence. This should be prioritised for staff who interact with family and domestic violence victims or perpetrators, and particularly those working in court locations that offer some specialist family and domestic violence services, to enable the staff to provide an appropriate and effective service.

**Recommendation 7****Page 33**

That the Attorney General ensures that the Department of Justice develop a family and domestic violence accreditation system for staff providing services in the Magistrates Court of Western Australia.

**Finding 13****Page 33**

The nuances of family and domestic violence can vary between different cultural groups, particularly for Aboriginal people and some culturally and linguistically diverse communities.

**Recommendation 8****Page 34**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that magistrates and court staff participate in cultural awareness training. This training should be tailored for different court locations depending on the demographics of the area.

**Finding 14****Page 35**

Magistrates and Magistrates Court of Western Australia staff regularly interact with and hear stories from people traumatised by family and domestic violence, leaving them at risk of vicarious trauma, burn out and mental health issues.

**Recommendation 9****Page 35**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that the Magistrates Court of Western Australia develops a properly accredited vicarious trauma plan to identify risk and manage magistrate and court staff wellbeing.

**Recommendation 10****Page 35**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that funding is available for magistrates and Magistrates Court of Western Australia staff to attend properly accredited vicarious trauma training. This should focus on strategies to help them cope with the traumatic information they are exposed to in the course of their work, as well as how to identify and support colleagues experiencing associated mental health issues.

**Chapter 5 – Legal services improve accessibility****Finding 15****Page 40**

There are significant benefits for the court and parties to Family Violence Restraining Order applications when both the applicant and respondent receive appropriate legal advice and are legally represented during court proceedings.

**Finding 16****Page 42**

There is an urgent need to increase the availability of duty lawyer services for parties to Family Violence Restraining Order applications in both the Magistrates Court of Western Australia and the Children's Court of Western Australia.

**Finding 17****Page 43**

There is a significant deficit in the availability of duty lawyer services for respondents to Family Violence Restraining Order applications.

**Recommendation 11****Page 44**

That the Attorney General urgently ensures a significant increase in funding for duty lawyer services for both applicants and respondents in Family Violence Restraining Order matters in both the Magistrates Court of Western Australia and the Children's Court of Western Australia. This funding should be sufficient to ensure that all applicants and respondents can access legal advice and representation.

**Finding 18****Page 45**

Legal Aid Western Australia and community legal centres currently receive inadequate funding to provide legal representation to parties at contested Family Violence Restraining Order hearings.

**Recommendation 12****Page 45**

That the Attorney General ensures sufficient funding for Legal Aid Western Australia and community legal centres to provide representation to parties at contested Family Violence Restraining Order hearings.

**Finding 19****Page 47**

Legal aid funding for related matters involving family and domestic violence across different jurisdictions is often provided in different silos, resulting in inefficiencies.

**Recommendation 13****Page 47**

That the Premier raises the issue of legal aid funding for related matters involving family and domestic violence with the National Cabinet with a view to simplifying funding arrangements to provide Legal Aid Western Australia with greater flexibility to apply Commonwealth funding to related State matters, and vice versa.

**Finding 20****Page 48**

There is a significant lack of legal services available in regional areas for all parties to Family Violence Restraining Orders applications, especially for Aboriginal people.

**Recommendation 14****Page 48**

That the Attorney General ensures sufficient funding for Legal Aid Western Australia, regional community legal centres and the Aboriginal Legal Service to provide a greater level of service in regional areas to parties to Family Violence Restraining Order applications.

**Chapter 6 – Support services improve accessibility****Finding 21****Page 52**

Recent changes to the service delivery model of the Family Violence Service may have a negative effect on the quality and timeliness of the service provided to clients.

**Recommendation 15****Page 52**

That the Attorney General conduct ongoing review of the Family Violence Service to measure both its quantitative and qualitative outcomes, including: the number of clients assisted, a breakdown of the mode of assistance, and client feedback on the quality of the service. The review should be conducted annually for the next three years and the results reported to Parliament in the Department of Justice's Annual Report.

**Finding 22****Page 53**

Strict criteria limit the ability of victims of family and domestic violence to access the specialist support services of the Family Violence Service throughout the entire court process.

**Finding 23****Page 54**

The Victim Support Service is insufficiently resourced to provide support to victims of family and domestic violence across all metropolitan Magistrates Court of Western Australia locations.

**Recommendation 16****Page 54**

That the Attorney General ensures that funding is increased for the Victim Support Service to improve the level of support to victims of family and domestic violence in the Magistrates Court of Western Australia, particularly to victims in criminal matters that proceed to trial.

**Finding 24****Page 55**

Support services for victims of family and domestic violence are severely limited in regional and remote areas, particularly for Aboriginal people. The geographical challenges lead to a disparity in the level of services available in some parts of regional Western Australia.

**Recommendation 17****Page 55**

That the Attorney General ensures funding for expanded support service delivery for victims of family and domestic violence in regional areas, including specialist support services for Aboriginal people, that may include innovative service delivery models to recognise the unique geography of Western Australia.

**Finding 25****Page 56**

While there is scope for volunteer services in a comprehensive court support service framework, these should not be a substitute for or bridge a gap in funded services delivered by fully trained professional staff.

**Recommendation 18****Page 56**

That the Attorney General ensures that court support services are sufficiently funded so as to not rely on volunteers to supplement services that should be provided by fully trained and engaged staff.

**Finding 26****Page 58**

There are significant benefits for the court and parties to Family Violence Restraining Order applications in providing specialist support services through separate applicant and respondent support workers.

**Recommendation 19****Page 58**

That the Attorney General ensures funding for specialist, in-court support services for all parties to Family Violence Restraining Order applications, including separate dedicated support workers for both applicants and respondents.



**Finding 27****Page 59**

A proactive, in-court information and referral service could provide valuable support to both applicants and respondents in Family Violence Restraining Order matters.

**Finding 28****Page 61**

It is vitally important that Aboriginal people are involved at a high level in designing and delivering court programs and support services that are culturally and linguistically appropriate for Aboriginal people affected by family and domestic violence.

**Finding 29****Page 62**

Improving access to justice for Aboriginal people, particularly for those affected by family and domestic violence, requires a greater level of specialist, culturally and linguistically appropriate support service delivery for Aboriginal people, particularly in regional and remote locations.

**Recommendation 20****Page 62**

That the Attorney General ensures funding for comprehensive specialist, culturally and linguistically appropriate court support services for Aboriginal people affected by family and domestic violence, particularly in regional and remote locations. Local Aboriginal communities must be significantly involved in the design and delivery of these services.

**Finding 30****Page 64**

The Magistrates Court of Western Australia's website currently contains no information in languages other than English.

**Recommendation 21****Page 64**

That the Attorney General ensures that the Department of Justice continues to expand the availability of information in other languages on all of its publicly accessible websites, and investigates the benefits of using website translation software.

**Finding 31****Page 65**

Understanding court process and outcomes can be challenging for court users who are not proficient in English.

**Finding 32****Page 65**

The cultural diversity of Western Australians should be reflected in the production of materials used to educate and inform court users about the role and process of the Magistrates Court of Western Australia.

**Recommendation 22****Page 65**

That the Attorney General and the Minister for Citizenship and Multicultural Interests ensure funding for production of a wide range of culturally diverse information materials for court users, with a particular focus on matters involving family and domestic violence. In particular, the use of low-cost visual resources should be further explored.

**Finding 33** **Page 66**

The Children’s Court of Victoria is currently piloting a ‘cultural support guides’ program to assist court users with a Sudanese or South Sudanese background.

**Recommendation 23** **Page 66**

That the Attorney General seek feedback from the Children’s Court of Victoria about the success of the cultural guides pilot program with a view to implementing a similar program in Western Australian courts.

**Finding 34** **Page 67**

Courts should be a touchpoint for people affected by family and domestic violence to access a broad range of support services.

**Finding 35** **Page 68**

Support services should be co-located at or near court precincts throughout Western Australia to make the most of the opportunity to engage people affected by family and domestic violence.

**Recommendation 24** **Page 68**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence direct the Department of Justice and the Department of Communities to collaborate on the design, location and service delivery model of family and domestic violence support service hubs at or near court precincts throughout Western Australia.

**Finding 36** **Page 72**

Community justice centres are an excellent example of the benefits to be realised for the court and court users in co-locating support services that are tailored to the needs of their local communities and are highly accessible.

**Recommendation 25** **Page 72**

That the Attorney General and the Minister for Community Services ensure that, when collaborating on future service delivery models, the Department of Justice and the Department of Communities consider the co-location model offered through community justice centres.

**Chapter 7 – Alternative dispute resolution methods may be useful for matters involving family violence**

**Finding 37** **Page 74**

Alternative dispute resolution methods may be useful in resolving court proceedings involving family and domestic violence.

**Finding 38** **Page 76**

Alternative dispute resolution methods are already being used successfully to resolve matters involving family and domestic violence in some Western Australian courts.

**Finding 39** **Page 79**

The Western Australian Government is intending to introduce a Family Violence Restraining Order conferencing pilot in two metropolitan courts.

**Recommendation 26** **Page 79**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program incorporates a mechanism for stakeholders to provide contemporaneous feedback on the program, to allow for the process to be improved as the pilot progresses.

**Recommendation 27** **Page 79**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program be expanded to include a pilot in at least one regional city and one remote location.

**Recommendation 28** **Page 79**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program is subject to a robust, transparent and independent evaluation prior to the conclusion of the pilot to determine if the program should continue and be expanded to other court locations.

The evaluation should consider:

- cost effectiveness and efficiency
- consistency of outcomes
- feedback from applicants and respondents, court staff, lawyers and support service workers to determine how different court workers are affected by the program
- whether stakeholders considered conferencing a favourable addition to the Family Violence Restraining Order process
- whether the process reduced trauma for applicants, when compared to contested hearings, and whether they felt safe and supported throughout.

The completed evaluation should be made public and provided to stakeholders.

**Finding 40** **Page 81**

Participants in the ACT Magistrates Court's shuttle conferencing identified that this process has many benefits.

**Finding 41** **Page 82**

Although the ACT Magistrates Court conferencing process still has some limitations, this alternative dispute resolution process is generally considered a better model than a solely adversarial approach.

**Finding 42****Page 83**

The Magistrates Court of Western Australia's Family Violence Restraining Order conferencing model will likely be more efficient than the ACT Magistrates Court's model due to the objection process limiting the number of matters that may proceed to conference. However, as all matters that go to conferencing in Western Australia will be contested, overall settlement rates arising from the conferencing will likely be lower.

**Finding 43****Page 83**

The Magistrates Court of Western Australia's Family Violence Restraining Order conferencing will be optional, which requires both parties' agreement in order for the conference to take place.

**Finding 44****Page 84**

Registrars facilitating the Family Violence Restraining Order conferencing process will be key to mitigating power imbalances between the parties, and ensuring that conferencing is effective.

**Recommendation 29****Page 84**

That the Attorney General ensures that all registrars appointed to facilitate the Family Violence Restraining Order conferencing process have appropriate legal and family and domestic violence training and experience, and that funding is provided to ensure registrars participate in ongoing relevant training and development.

**Recommendation 30****Page 84**

That the Attorney General ensures that sufficient funding is provided to ensure all parties that participate in the Family Violence Restraining Order conferencing process are legally represented.

**Recommendation 31****Page 85**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence ensure that all parties that participate in the Family Violence Restraining Order conferencing process are able to access appropriate support services throughout the entirety of Family Violence Restraining Order court proceedings.

**Finding 45****Page 85**

Family Violence Restraining Order parties with acute mental health issues may need additional specialised support to participate in the Family Violence Restraining Order conferencing process.

**Recommendation 32****Page 85**

That the Attorney General ensures that additional specialised support services are available to support Family Violence Restraining Order parties with acute mental health issues to fully participate in the Family Violence Restraining Order conferencing process.

## Chapter 8 – Existing Family Violence Restraining Order processes can be improved

### Finding 46

Page 90

The Magistrates Court of Western Australia’s website contains limited information about who can apply for a Family Violence Restraining Order, and the process.

### Recommendation 33

Page 90

That the Attorney General directs the Department of Justice to update the Magistrates Court of Western Australia’s website to expressly state that intimate or family-type relationships including same-sex relationships are eligible relationships for the purpose of Family Violence Restraining Orders.

### Finding 47

Page 92

Online Family Violence Restraining Order applications make the court process more accessible for potential applicants.

### Recommendation 34

Page 92

That the Attorney General ensures that Family Violence Restraining Order applications can be completed online by any potential applicant, with or without the assistance of a designated legal or support service.

### Recommendation 35

Page 93

That the Attorney General ensures that Family Violence Restraining Order applications can be initiated through a generic or central registry that does not identify the location of the applicant to eliminate any associated potential risks to the applicant.

### Finding 48

Page 94

That the Western Australia Police Force seldom initiates Family Violence Restraining Order applications on behalf of family and domestic violence victims, despite having the power to do so.

### Finding 49

Page 95

There would be significant benefits to the Western Australia Police Force initiating Family Violence Restraining Order applications on behalf of victims of family and domestic violence.

### Recommendation 36

Page 95

That the Minister for Police ensures that the Western Australia Police Force officers actively seek instructions from a victim of family and domestic violence to make a Family Violence Restraining Order application on the victim’s behalf when attending a family and domestic violence incident, and that the Western Australia Police Force is appropriately trained and sufficiently resourced to take on this role.

**Recommendation 37****Page 95**

That the Minister for Police ensures the Western Australia Police Force report in its annual report on the number of Family Violence Restraining Order applications initiated on behalf of victims of family and domestic violence.

**Finding 50****Page 96**

There would be benefits to a Police Order operating as a Family Violence Restraining Order application, upon the instruction of the person to be protected.

**Recommendation 38****Page 96**

That the Attorney General amends the *Restraining Orders Act 1997* to provide that a Police Order can operate as a Family Violence Restraining Order application, if the person to be protected by the order so instructs.

**Finding 51****Page 97**

There may be benefits to the Western Australia Police Force being able to unilaterally apply for a Family Violence Restraining Order to protect a victim of family and domestic violence, including without the agreement of the person to be protected by the order.

**Recommendation 39****Page 98**

That the Attorney General and the Minister for Police amend the *Restraining Orders Act 1997* to provide the Western Australia Police Force with the power to make an application for a Family Violence Restraining Order without specific instruction or agreement of the victim.

**Finding 52****Page 98**

The duration of Police Orders should not be extended.

**Finding 53****Page 99**

People with acute mental health issues may need additional support to apply for Family Violence Restraining Orders.

**Recommendation 40****Page 99**

That the Attorney General ensures the availability of a specialist legal advice and support service to assist people with acute mental health issues to apply for a Family Violence Restraining Order.

**Finding 54****Page 101**

It is important that Family Violence Restraining Order applicants continue to have the option to elect that the initial hearing can be conducted in the absence of the respondent.

**Finding 55****Page 102**

Conducting Family Violence Restraining Order proceedings via telephone or videolink improves the accessibility of the Magistrates Court of Western Australia, particularly for court users who live in regional and remote areas.

**Recommendation 41****Page 102**

That the Attorney General ensures that the Magistrates Court of Western Australia has sufficient funding to enhance its telecommunications capability for Family Violence Restraining Order parties to appear in proceedings by remote or virtual mechanisms, with a view to greater utilisation of this technology in the future.

**Finding 56****Page 102**

Some Family Violence Restraining Order applicants may be unaware that a support person can accompany them into the court room during proceedings.

**Recommendation 42****Page 102**

That the Attorney General ensures that the Magistrates Court of Western Australia puts up signage in registries where Family Violence Restraining Order applications are heard to inform applicants that a support person may accompany them into the court room for the initial and subsequent hearings.

**Finding 57****Page 103**

Approximately half of all interim Family Violence Restraining Orders contain incorrect or inconsistent information about the personal details of the respondent, which requires manual reconciliation by Western Australia Police Force before the order can be served on the respondent.

**Recommendation 43****Page 103**

That the Attorney General and the Minister for Police ensure that designated Magistrates Court of Western Australia staff are provided with access to the Western Australia Police Force Incident Management System for the purpose of reconciling a Family Violence Restraining Order respondent's personal information to ensure timely service of the order.

**Recommendation 44****Page 103**

That the Attorney General and the Minister for Police further ensure that police officers have the ability to amend incorrect or inconsistent details about the personal information of the respondent of a Family Violence Restraining Order up to the point of service of the order without affecting the validity of the order.

**Finding 58****Page 104**

It is important to provide support to a respondent upon service of a Family Violence Restraining Order to ensure that they understand the conditions of the order and their legal options, as this may help minimise risk to the applicant's safety.

**Recommendation 45****Page 105**

That the Attorney General work with the Minister for Police to ensure that all Western Australia Police Force officers serving Family Violence Restraining Orders on respondents receive sufficient training to adequately explain the conditions of an order to a respondent and provide information about where the respondent may seek assistance. Consideration should be given to:

- the frequency and content of training, including refresher training
- how to ensure that a respondent who speaks English as another language understands the conditions of the order
- providing standardised wording and guidelines to police officers to assist them in the provision of information to respondents and ensure consistency of the message between officers
- written information sheets, pamphlets or information in electronic form in various languages, to be provided to respondents at the time of service detailing options and where assistance may be sought.

**Finding 59****Page 105**

Respondents who are served with Family Violence Restraining Orders whilst involuntarily detained in a mental health unit in a hospital under an inpatient treatment order may have a limited capacity to understand the terms of the order and the implications of breaching the order. This may lead to a risk that they may not comply with the order upon release from the facility.

**Recommendation 46****Page 106**

That the Attorney General, the Minister for Police and the Minister for Mental Health develop a protocol for determining an appropriate time for a Family Violence Restraining Order to be served on a respondent who has been involuntarily detained in a mental health unit in a hospital under an inpatient treatment order. This protocol should set out a method of determining the appropriate time for an order to be served upon a respondent, and who is to make this decision. Factors that should be taken into account by the decision maker include the safety of the applicant, the capacity of the respondent to understand the conditions of the order, and any other matters the treating physicians may consider relevant. However, for the ongoing safety of the applicant, the protocol must ensure service is effected before the respondent is released.



**Recommendation 47****Page 106**

That the Attorney General and the Minister for Police report to Parliament on the operation of the newly introduced instantaneous notification system, including:

- how frequently it is used in comparison with other methods of notification of service
- the length of time passing between the service by Western Australia Police Force of a Family Violence Restraining Order on a respondent and the notification of service to an applicant via the instantaneous notification system and other methods of notification
- the experience of Family Violence Restraining Order applicants, including whether the new instantaneous notification system has been considered a positive development.

**Finding 60****Page 107**

There are insufficient closed circuit television facilities at Magistrates Court of Western Australia courts, and applicants lack awareness of such facilities where they do exist, to enable witnesses testifying in family and domestic violence related matters to access protective measures when requested.

**Recommendation 48****Page 107**

That the Attorney General ensures that the Magistrates Court of Western Australia, at all of its locations, has the necessary facilities to provide family and domestic violence victims with access to protective measures where necessary, and to ensure that:

- family and domestic violence victims participating in Family Violence Restraining Order proceedings are made aware of the availability of protective measures
- magistrates provide an explanation as to why a request for protective measures has been declined.

**Finding 61****Page 110**

Magistrates making final Family Violence Restraining Orders rarely include a condition requiring the respondent to attend a family and domestic violence perpetrator behaviour change program. This is exacerbated by the lack of availability and accessibility of these programs, particularly in regional areas.

**Recommendation 49****Page 111**

That the Attorney General ensures that the Chief Magistrate of the Magistrates Court of Western Australia:

- reminds all magistrates of the capacity to include a condition in a Family Violence Restraining Order requiring a respondent to attend a family and domestic violence perpetrator behaviour change program
- creates guidelines on circumstances where it may be appropriate for a magistrate to include a condition in a Family Violence Restraining Order requiring a respondent to attend a family and domestic violence perpetrator behaviour change program, and how such a condition may be overseen and enforced.

**Recommendation 50****Page 111**

That the Attorney General ensures sufficient funding for family and domestic violence perpetrator behaviour change programs to ensure they are available for Family Violence Restraining Order respondents to attend where required.

**Recommendation 51****Page 111**

That the Attorney General ensures that the Department of Justice report in its annual report on the utilisation of family and domestic violence perpetrator behaviour change programs.

**Recommendation 52****Page 112**

That the Attorney General ensures that all Magistrates Court of Western Australia registries display information on how court users can provide feedback about court processes, but not the outcome of matters. This information should be provided in different languages and should be child-friendly.

## **Chapter 9 – Specialist family and domestic violence courts in Western Australia need clear objectives**

**Finding 62****Page 117**

The justifications for the shift from the Family Violence Court model to the Family Violence List model have not been fully explained.

**Finding 63****Page 118**

Specialist family and domestic violence courts in Western Australia have suffered from a long-standing lack of clear objectives, which has limited the ability to measure their true effectiveness.

**Recommendation 53****Page 118**

That the Attorney General ensures that clear objectives, performance indicators and a framework for implementation and evaluation are developed for the Family Violence List. These details should be included in the Department of Justice's annual report.

## **Chapter 10 – Existing capabilities in specialist list criminal proceedings involving family and domestic violence should be expanded**

**Finding 64****Page 120**

Although case management is an important part of the Family Violence List in the Magistrates Court of Western Australia, magistrates are inadequately resourced to undertake it.

**Finding 65****Page 121**

The Magistrates Court of Western Australia's Family Violence List operates without a formal framework or guidelines.

**Recommendation 54****Page 121**

That the Attorney General ensures that the Department of Justice consults with the Chief Magistrate to develop a formal framework for the Family Violence List that clearly defines its objectives and operational procedures.

**Finding 66****Page 122**

The limited availability of Bail Risk Assessment reports creates a disadvantage for magistrates dealing with family and domestic violence offences outside the Family Violence List.

**Recommendation 55****Page 122**

That the Attorney General ensures that sufficient funding is provided to the Family Violence Service to make Bail Risk Assessment reports available expeditiously in all metropolitan and regional locations, as recommended by the Law Reform Commission of Western Australia.

**Finding 67****Page 122**

There is a need to legislatively clarify the appropriate and lawful use of sensitive information contained in Bail Risk Assessment reports.

**Recommendation 56****Page 122**

That the Attorney General reviews the *Bail Act 1982* with a view to introducing amendments to clarify the use of Bail Risk Assessment reports, particularly where they contain information that may compromise a person's safety.

**Finding 68****Page 123**

Conditional bail programs should be available for people accused of family and domestic violence offences, as they can offer a valuable opportunity for early intervention.

**Recommendation 57****Page 123**

That the Attorney General directs the Department of Justice to conduct scoping for conditional bail programs for people accused of family and domestic violence offences.

**Finding 69****Page 124**

Making pre-recorded video statements taken from family and domestic violence victims admissible during criminal proceedings may increase the probability of conviction.

**Recommendation 58****Page 124**

That the Attorney General urgently explores introducing reforms to allow family and domestic violence victims to provide testimony through the use of a pre-recorded video statement with Western Australia Police Force, similar to the 'Domestic Violence Evidence in Chief' reforms introduced in New South Wales.

**Finding 70** **Page 126**

The current state of the law, which provides that the consent of the protected person to a breach of a Family Violence Restraining Order is not to be considered a mitigating factor in sentencing, is appropriate to protect the interests of victims of family and domestic violence.

**Finding 71** **Page 128**

While behaviour change programs offer a valuable opportunity to engage and monitor perpetrators of family and domestic violence, there is limited evidence of their long-term effectiveness.

**Recommendation 59** **Page 128**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence direct the Department of Justice and the Department of Communities to conduct independent evaluations of all government funded behaviour change programs to monitor their effectiveness. Such evaluations should be referenced in the respective Departments' annual reports, and made publicly available to inform public debate.

**Finding 72** **Page 129**

Access to behaviour change programs for many perpetrators of family and domestic violence is currently limited due to lack of availability and lack of flexibility. This issue is exacerbated in regional and remote Western Australia.

**Recommendation 60** **Page 129**

That the Attorney General directs the Department of Justice to commence scoping for more flexible programs that can cater for specific cohorts of perpetrators, especially children and young people. Further, the Attorney General must ensure sufficient funding for an expanded range of behaviour change programs for specific cohorts of perpetrators, especially children and young people.

**Finding 73** **Page 130**

The Barndimalgu Aboriginal Family Violence Court shows encouraging signs of producing positive outcomes for Aboriginal people affected by family and domestic violence.

**Recommendation 61** **Page 130**

That the Attorney General prioritises the evaluation of the Barndimalgu Aboriginal Family Violence Court and uses the findings of the evaluation as a basis to improve and expand culturally and linguistically appropriate court responses for Aboriginal people.

**Finding 74** **Page 131**

Aboriginal community-led court programs are better placed to overcome the disadvantages faced by Aboriginal people in the justice system and produce positive outcomes for people affected by family and domestic violence.

**Recommendation 62****Page 131**

That the Attorney General prioritises the expansion of Aboriginal community-led court programs to respond to family and domestic violence, particularly in regional and remote areas, and ensures funding for the development and implementation of these programs.

**Chapter 11 – Breaking down jurisdictional silos****Finding 75****Page 135**

A court system that integrates both civil and criminal jurisdictions related to family and domestic violence would likely be beneficial in Western Australia, but would require significant funding and a whole of government approach that requires further investigation.

**Finding 76****Page 136**

Integrating Family Violence Restraining Order matters and criminal matters arising from family and domestic violence within the Magistrates Court of Western Australia may be an achievable version of jurisdictional integration in Western Australia.

**Recommendation 63****Page 136**

That the Attorney General ensures that the Department of Justice investigates implementing a specialist family and domestic violence court model that integrates Family Violence Restraining Order matters and criminal matters arising from family and domestic violence within the Magistrates Court of Western Australia.

In undertaking this investigation, the Department of Justice should consider the views of magistrates, support service providers, legal service providers, court users and other stakeholders to develop a potential model with a clear structure and objectives.

This model should be trialled at one metropolitan magistrates court and one regional and remote magistrates court for no fewer than two years.

The trial should be subject to a rigorous, independent and public evaluation process, which considers not only the economic outcomes, but also the experiences of court users.

**Finding 77****Page 138**

Provisions in the *Restraining Orders Act 1997* that provide that a court convicting a person of certain violent offences may make a Family Violence Restraining Order against that person to protect the victim of the offence are rarely used.

**Recommendation 64****Page 138**

That the Attorney General and the Minister for Police ensure that the Magistrates Court of Western Australia and the Western Australia Police Force work together to develop a method of identifying concurrent family and domestic violence related criminal matters and Family Violence Restraining Order matters with a view to reaching a final determination on all such related matters at the same hearing.

**Finding 78****Page 139**

The Magistrates Court of Western Australia does not have, but would benefit from, an overarching plan to manage all matters involving family and domestic violence.

**Recommendation 65****Page 139**

That the Attorney General ensures that the Department of Justice and the Magistrates Court of Western Australia develop an overarching plan to manage all matters involving family and domestic violence. This plan should be developed and implemented by a strategic oversight committee including stakeholder representatives. This plan should require that each Magistrates Court of Western Australia registry has a local oversight group to facilitate information sharing and feedback between stakeholders for the purpose of process improvement and dealing with operational issues.

**Finding 79****Page 141**

Legislative changes that amended the *Restraining Orders Act 1997* to clarify that the Family Court of Western Australia has the power to hear *ex parte* Family Violence Restraining Order applications may reduce the number of concurrent related matters being heard in the Family Court of Western Australia and the Magistrates Court of Western Australia.

**Recommendation 66****Page 141**

That the Attorney General ensures that the Department of Justice undertake an evaluation to determine the feasibility and potential outcomes of transferring Family Violence Restraining Order matters from the Magistrates Court of Western Australia to the Family Court of Western Australia where there are related proceedings currently before the Family Court of Western Australia.

**Recommendation 67****Page 143**

That the Attorney General directs the Department of Justice to consider the need for and scope of legislative guidance to resolve potential duplication between concurrent matters before the Magistrates Court of Western Australia and the Children's Court of Western Australia.

**Recommendation 68****Page 143**

That the Attorney General ensures that the Department of Justice works with the Magistrates Court of Western Australia and Children's Court of Western Australia to develop information sharing protocols.

**Finding 80****Page 144**

Regional magistrates of the Magistrates Court of Western Australia are reluctant to exercise the non-Federal jurisdiction of the Family Court of Western Australia due to a lack of knowledge about the subject matter and relevant legislation, and a significant workload leaving limited time to improve that knowledge.

**Finding 81** **Page 145**

Regional magistrates of the Magistrates Court of Western Australia have limited knowledge of the subject matter and relevant legislation of the Children’s Court of Western Australia’s care and protection jurisdiction despite having the authority to hear such matters.

**Recommendation 69** **Page 145**

That the Attorney General ensures that the Department of Justice works with the Chief Magistrate to ensure that regional magistrates exercising the jurisdiction of the Family Court of Western Australia and the Children’s Court of Western Australia receive formal initial and ongoing training to preside over these matters with sufficient knowledge and expertise.

## **Chapter 12 – Inadequacy of existing court facilities and security**

**Finding 82** **Page 148**

Modern court design principles now incorporate important design elements to address concerns about victim safety. Unfortunately, the vast majority of Western Australian court buildings were built prior to the adoption of such principles.

**Finding 83** **Page 149**

Many Magistrates Court of Western Australia buildings are no longer ‘fit for purpose’.

**Finding 84** **Page 149**

Older Magistrates Court of Western Australia facilities need to be improved to address concerns about victim safety.

**Recommendation 70** **Page 149**

That the Attorney General ensures that the Department of Justice undertakes a review of existing court facilities to consider how necessary safety requirements and support services can be accommodated at or near existing Magistrates Court of Western Australia buildings.

**Finding 85** **Page 150**

The lack of child-minding facilities at court buildings throughout Western Australia limits accessibility.

**Recommendation 71** **Page 150**

That the Attorney General ensures that the Department of Justice investigate introducing child-minding facilities within Magistrates Court of Western Australia buildings.

## Chapter 13 – An integrated government response

### Recommendation 72

Page 160

That the Minister for Police and Minister for Prevention of Family and Domestic Violence report to Parliament on the current status of discussions regarding the proposal that Western Australia Police Force officers leave appropriate pamphlets containing information about family and domestic violence and support services for both victims and perpetrators after attending a suspected family and domestic violence incident, or when serving any document relating to family and domestic violence.



# Chapter 1

## Why the Committee embarked on its inquiry and what it looked at

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### Stopping family and domestic violence requires a multifaceted approach

For far too long family and domestic violence (FDV) was viewed as a ‘domestic’ matter, not something that could be talked about in the open. For some, FDV became a normalised part of their domestic relationship. Through survivors, and their supporters, speaking publicly and advocating for change, today there is far greater community recognition that FDV is reprehensible.

*‘Stopping family and domestic violence is everyone’s business.’*

*– Ms Michelle Andrews,  
Department of Communities*

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Despite this increasing recognition, we are still a long way from eradicating this form of violence. FDV ‘is an extremely complex problem with no singular theory or proposal able to adequately or comprehensively address or resolve the phenomenon.’<sup>1</sup> In many cases, family violence can occur alongside other complex issues, including mental health issues, illicit substance use and addiction, trauma, homelessness, neglect and other legal issues.<sup>2</sup>

Addressing FDV therefore needs a multifaceted approach, from prevention through to prosecution and rehabilitation. Children, and adults, need to be taught about healthy relationships, including the dynamics of power and control in abusive relationships, and common mechanisms for resolving conflict. Family and domestic violence survivors need to feel confident that they will be believed when they come forward; and they need to be supported to leave an abusive situation. Perpetrators need to be held accountable, and also supported to address the underlying issues contributing to their violent and controlling behaviour.

### The court system is a critical part of the Western Australian Government’s response to family and domestic violence

The court system alone cannot stop FDV, but it plays an important role as part of an integrated response to family violence, and as an opportunity for early intervention.<sup>3</sup> The Magistrates Court of Western Australia (MCWA) is the primary court with jurisdiction to deal with Family Violence Restraining Orders (FVROs), and most criminal matters involving family and domestic violence.

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1 Submission 23, The Magistrates’ Society of Western Australia, p. 4.

2 *ibid.*; Submission 24, Centrecare Inc., p. 1.

3 Submission 38, Legal Aid Western Australia, p. 4.

Victims of FDV may be reluctant to come forward, for fear that they will not be believed,<sup>4</sup> or that doing so will exacerbate their situation. It is therefore important that FDV survivors can access a court system that supports and protects them, and that holds perpetrators to account for their actions, as well as supporting them to change their behaviour.<sup>5</sup>

It is for these reasons that the Committee embarked on this inquiry. The Committee aimed to improve court processes that support victims in reporting offending and breaches of FVROs, and as they go through court processes. It also aimed to make recommendations that increase offender scrutiny and accountability.

The Committee would like to acknowledge the cooperation and openness of the Chief Magistrate, MCWA magistrates, and court staff in providing information and evidence to assist the Committee in its inquiry.

### **What the Committee's inquiry was about**

The Committee decided to inquire into how the MCWA manages matters involving FDV. It focused on court processes, but also considered how court based and externally provided legal and support services can affect the accessibility and efficiency of the court, and the experiences of both victims and perpetrators.

The inquiry looked to other jurisdictions' Magistrates courts to discover alternative ways to manage matters involving FDV that may suit the Western Australian context. To the extent relevant, the Committee also considered how the MCWA affects, and is affected by, the operations of other Western Australian courts, including the Children's Court of Western Australia, which has similar jurisdiction to the MCWA to deal with FDV-related matters involving children.

This inquiry did not specifically consider the Family Court of Western Australia (FCWA), or the family law system more generally, although the FCWA does manage matters involving FDV. Primarily federal, the family law system has undergone two significant inquiries in

*'... an intersection with the justice system provides an opportunity for a beneficial intervention and provides an opportunity to identify and address the underlying causes that have brought a person before the court. ... if you can identify and address those underlying causes then you have got much more chance of preventing, or reducing the likelihood of, that person coming back before the court.'*

*– The Hon. Wayne Martin,  
Chief Justice of Western Australia*

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4 Submission 20, Relationships Australia WA Inc., p. 3.

5 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 10 February 2020, pp. 1–2.

recent years,<sup>6</sup> and a third is currently underway.<sup>7</sup> This inquiry considered the work of the FCWA only to the extent that it affects the MCWA's operations.

The Committee also looked at the role, experience and training of magistrates and court staff with respect to matters involving FDV. However, it did not consider the conduct of individual magistrates, matters before the court, nor the application of law in particular matters. The Committee was particularly mindful of the need to ensure the 'integrity and institutional independence'<sup>8</sup> of the MCWA as it undertook its inquiry.

## **The jurisdiction of the Magistrates Court of Western Australia with respect to matters involving family and domestic violence**

The MCWA responds to matters involving family violence in both its criminal and civil (restraining orders) streams. It may also manage other types of matters involving family violence in several other jurisdictions it exercises less frequently.

### **Family Violence Restraining Orders**

An FVRO is a 'civil law response to family and domestic violence.'<sup>9</sup> It is a court order against a family member (see definition in Chapter 2) which is 'designed to stop threats of violence or violence, behaviour that coerces, controls, or causes [a person] to be fearful. It tells [the bound person] to stay away from [the protected person] and/or to stop behaving in certain ways towards [the protected person].'<sup>10</sup>

An FVRO will contain conditions that stop the person bound from doing things they would normally be allowed to do, including coming to or near where the applicant lives or works, or communicating with the applicant.<sup>11</sup> These restrictions will be tailored to the situation, and may include conditions that allow the respondent to spend time with their children, or specify the types of communication that can occur between parties.

A failure of the bound person to comply with the conditions of an FVRO is a breach. Breaching an FVRO is a criminal offence. If convicted of the offence, a bound person could be liable for a fine of \$10,000, imprisonment for two years, or both.<sup>12</sup>

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6 Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System: Final Report*, ALRC Report 135, Australian Government, Brisbane, March 2019; House of Representatives Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence*, Parliament of the Commonwealth of Australia, Canberra, December 2017.

7 Joint Select Committee on Australia's Family Law System, Parliament of the Commonwealth of Australia, commenced 19 September 2019, reporting date 7 October 2020 (as at 13 June 2020).

8 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 1.

9 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. v.

10 Legal Aid Western Australia, *Family violence restraining orders – information*, Western Australia, 15 August 2018, p. 2.

11 *ibid.*

12 *Restraining Orders Act 1997*, (WA), s. 61.

The FVRO was introduced as a new class of restraining order in 2017, separate from the existing violence restraining order and misconduct restraining order.<sup>13</sup> It was a key part of the government's response to the Law Reform Commission of Western Australia's (LRCWA) report *Enhancing Laws Concerning Family and Domestic Violence*.<sup>14</sup>

### Criminal jurisdiction

All criminal matters are first heard in the MCWA.<sup>15</sup> The MCWA will deal with FDV-related criminal charges, in particular breaches of Police Orders, breaches of FVROs, and 'various assaults where the circumstances of aggravation is that the parties were in a family and domestic relationship.'<sup>16</sup>

Matters may be heard in either the general criminal jurisdiction, or in the Family Violence List (FV List) (see Chapters 9 and 10). Matters that the Western Australia Police Force (Police) or MCWA identify as involving an element of FDV will normally be allocated to the FV List, subject to the capacity of the FV List to schedule matters. The allocation of matters involving FDV to the FV List is not automatic; it is not always clear if a matter involves FDV at the outset, or the family or domestic relationship may not be a circumstance of aggravation.<sup>17</sup> If the accused contests the charges, the matter will move back to the general criminal list.

The *Family Violence Legislation Reform Act 2020* introduced new criminal offences which may be dealt with in the MCWA.<sup>18</sup> It is not expected that these will significantly impact on the workload of the MCWA, as in the majority of cases the offences will not capture new instances of criminal behaviour. Rather, they will add a further charge of greater seriousness to existing criminal behaviour. Similarly, declarations of an offender as a 'serial family violence offender' are not expected to occupy any significant extra court time, as this will comprise part of a presentence report to be dealt with in existing court time.<sup>19</sup>

### Residential tenancies and other jurisdictions

In 2019, the Western Australian Government introduced FDV-related amendments to residential tenancies legislation.<sup>20</sup> The purpose of the amendments was to produce 'better outcomes for victims of family violence regarding their residential tenancy arrangement by giving them more choice and greater certainty about the outcomes.'<sup>21</sup>

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13 *Restraining Orders Act 1997*, (WA).

14 The Hon. Michael Mischin MLC, Attorney General, and the Hon. Liza Harvey MLA, Minister for Women's Interests, *Family violence reform for Western Australia*, media release, 8 March 2015.

15 Submission 10, Chief Magistrate of Western Australia, p. 1.

16 *ibid.*, p. 4.

17 *ibid.*

18 *Family Violence Legislation Reform Act 2020*, (WA), s. 6.

19 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 2.

20 This implemented Recommendation 33 of the Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 109.

21 The Hon. Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence, Legislative Assembly, *Hansard*, 15 May 2018, p. 2747.

Changes to the legislation enabled tenants who are affected by FDV to leave a tenancy arrangement without going to court, and providing only seven days' notice to their landlord. Tenants can also apply to the MCWA to have the perpetrator's name removed from the tenancy agreement, or seek removal of their name from a tenancy database. The MCWA will also adjudicate disputes about property damage, unpaid rent or bonds.<sup>22</sup>

Other than noting the capacity of the court to provide relief to tenants affected by FDV, the Committee received limited evidence about the extent to which these legislative powers have been used. As such, this jurisdiction has not been discussed further in this report.

In regional locations, the MCWA also deals with family law, and care and protection matters where family violence may be an issue.<sup>23</sup> This is discussed further in Chapter 11.

### **The Department of Justice's role**

The Department of Justice's Court and Tribunal Services Division is responsible for administration of the MCWA. This includes staffing courts' registries, and funding and/or providing victim and other support services.<sup>24</sup>

The Department also developed and is responsible for the Integrated Court Management System, the MCWA's client record management system. This multi-function system interfaces with other agencies, allows court clients and the public to view court details, and administers court matters.<sup>25</sup>

The Department of Justice is currently undertaking some work to improve its response to family and domestic violence. In particular, it is developing a whole of agency family and domestic violence strategy, and is carrying out a statutory review of the legislation which introduced the FVRO regime.<sup>26</sup>

### **How effectiveness and efficiency is measured in a court context**

The International Consortium of Court Excellence is an organisation comprising judicial bodies from around the world. The Australasian Institute of Judicial Administration was a founding member.<sup>27</sup>

The Consortium formed the International Framework for Court Excellence (Framework), which is a quality management system and best practice guide for improving court

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22 Department of Mines, Industry Regulation and Safety, *Safe Tenancy WA*, 17 April 2020, accessed 6 May 2020, <<https://www.commerce.wa.gov.au/consumer-protection/safe-tenancy-wa>>.

23 Submission 38, Legal Aid Western Australia, p. 3.

24 Submission 32, Department of Justice, p. 2.

25 *ibid.*

26 *ibid.*, pp. 11–12.

27 The Australasian Institute of Judicial Administration, *International Framework for Court Excellence*, 2019, accessed 23 December 2019, <<https://aija.org.au/international-framework-for-court-excellence/>>.

performance. In addition to setting out some universal core values, the Framework includes ‘eleven focused, clear and actionable core court performance measures.’<sup>28</sup> These are:

- court user satisfaction
- access fees
- case clearance rate
- on-time processing
- duration of pre-trial custody
- court file integrity
- case backlog
- trial date certainty
- court employee engagement
- compliance with court orders
- cost per case.

The Department of Justice does not utilise this Framework in evaluating the performance of courts. The Department has previously considered implementing this Framework, however it did not progress due to projected resource requirements, including significant involvement by judicial officers and court administrators.<sup>29</sup> Instead it uses two main KPIs to measure the efficiency of the MCWA; these are ‘time to trial’, and ‘cost per case’ for each of the civil and criminal jurisdictions.<sup>30</sup>

The Committee recognised several of the performance measures in this Framework may be useful when analysing the work of the MCWA. These are: court user satisfaction, case backlog, compliance with court orders, and cost per case. Many of the recommendations made throughout this report are made with these performance measures in mind.

### **This inquiry draws from, and builds on, several previous inquiries**

The Committee acknowledges that there have been many FDV-related inquiries and reports in recent years, which have all contributed to the growth of FDV knowledge in Western Australia and across Australia. Based on the terms of reference of its inquiry, and the evidence it received, the Committee has given particular consideration to the reports from the following inquiries.

#### **Western Australia**

In 2014, the LRCWA published its final report on *Enhancing Family and Domestic Violence Laws*. Some of the recommendations have been acted upon, yet many have not.<sup>31</sup> While the Committee did not directly inquire into the outcomes of this report, much of the evidence gathered by the Committee during its inquiry is consistent with LRCWA’s findings and recommendations from six years ago. The Committee is concerned that not enough was done in responding to these recommendations.

The Committee was also informed by the work of the Ombudsman Western Australia, who published a report on an *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* on 19 November 2015. The

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28 International Consortium for Court Excellence, *The International Framework for Court Excellence*, n.d., accessed 23 December 2019, <<http://www.courtexcellence.com/>>.

29 Submission 32B, Department of Justice, p. 1.

30 Department of Justice, *Annual Report 2018/19*, Western Australia, 23 September 2019, pp. 166, 169.

31 Submission 30, Community Legal Western Australia, p. 8.

Ombudsman made a number of recommendations, primarily to the Police, and the (then) Department for Child Protection and Family Services.

## Victoria

In 2015 and 2016, the Victorian Government undertook a Royal Commission into Family Violence (Royal Commission).<sup>32</sup> The comprehensive report made 227 recommendations across a wide variety of FDV-related matters, many of which have relevance to Western Australia, and to the Committee's inquiry. Witnesses to this inquiry regularly referred to elements of Victoria's judicial system's response to FDV when noting improvements that could be made within Western Australia.<sup>33</sup> The MCWA's Chief Magistrate noted that Victoria is the 'benchmark jurisdiction' in its judicial response to FDV, which was achieved by appointing a very large number of Magistrates.<sup>34</sup> As at 30 June 2016, the Magistrates' Court of Victoria had 103 magistrates and 16 reserve magistrates.<sup>35</sup> By 7 May 2020, four years after the Royal Commission released its report, this has risen to 145 magistrates and 32 reserve magistrates.<sup>36</sup> It is not specified how many additional magistrates were appointed in response to the findings of the Royal Commission.

## Queensland

Queensland's Special Taskforce on Domestic and Family Violence released its final report *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* on 28 February 2015. The Queensland Government is continuing to implement the recommendations arising out of the report, releasing a yearly snapshot of progress. Of particular relevance for Western Australia was the introduction of a trial specialist family violence court, which has now been expanded to multiple locations.

## Joint Australian Law Reform Commission and New South Wales Law Reform Commission Report

In 2010, the Australian Law Reform Commission and New South Wales Law Reform Commission published the report on their inquiry into *Family Violence—A National Legal Response*. Many of the findings and recommendations made throughout this report were not implemented, and remain relevant as the reported incidence of FDV continues to grow across Australia.

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32 Royal Commission into Family Violence, *Royal Commission into Family Violence*, 17 November 2017, accessed 26 June 2020, <<http://rcfv.archive.royalcommission.vic.gov.au/>>.

33 For example: Submission 12, Women's Council for Family and Domestic Violence Services, p. 7; Submission 16, Aboriginal Family Law Services, p. 8; Submission 38A, Legal Aid of Western Australia, p. 4; Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 10; Judge Julie Wager, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 9; Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 11.

34 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Briefing*, 7 August 2019.

35 Magistrates' Court of Victoria, *Annual Report 2015–2016*, Victoria, 30 September 2016, p. 1. Note: this includes magistrates that sit in the Children's Court of Victoria and the Coroner's Court of Victoria.

36 Magistrates' Court of Victoria, *Judicial Officers*, 7 May 2020, accessed 26 June 2020, <<https://www.mcv.vic.gov.au/judicial-officers>>. Note: this includes magistrates that sit in the Children's Court of Victoria and the Coroner's Court of Victoria.

## Terminology used

The Committee gave careful consideration throughout its inquiry to the appropriate terms to use to describe some of the concepts it discusses.

The Australian Institute of Health and Welfare describes family violence as ‘violence between family members, typically where the perpetrator exercised power and control over another person’, while domestic violence generally relates to instances of violence that occur in intimate (current or previous) partner relationship.<sup>37</sup> Different terminology is used by legal and support services, the Western Australian Government in its strategies and service provision, in different jurisdictions and across the community to discuss the same issue.<sup>38</sup> The Committee chose to use the terms ‘family violence’, ‘family and domestic violence’, ‘domestic and family violence’, ‘FV’ and ‘FDV’ interchangeably to capture the full range of experiences.

The Committee chose to use the terms ‘victim’ and ‘survivor’ interchangeably throughout the report. ‘Victim’ is most commonly used throughout public discourse, and is particularly appropriate for people who are victims of FDV-related homicides. In 2018, there were 37 FDV-related homicides in Western Australia, which was the largest number reported of all states that year.<sup>39</sup> However, some suggest that the term ‘victim’ is disempowering and favour use of ‘survivor’. By using these terms interchangeably, the Committee intends to convey that family violence is a process of victimisation, and while some victims are killed by their abusers, others can and do survive it and move on with their lives.<sup>40</sup>

Where referring to parties in court proceedings, the Committee uses the terms as used by the MCWA to reflect a person’s role in the court proceedings. In FVRO proceedings these are ‘applicant’ and ‘respondent’; in criminal proceedings these are ‘the accused’ or ‘the offender’, and ‘the victim’ or ‘witness’.

Whilst acknowledging that women are overwhelmingly victims of family violence, and men are perpetrators, the Committee has chosen to use gender neutral terminology throughout the report to recognise that FDV can occur in a relationship regardless of gender. Some victims of FDV are male, and some perpetrators are female. Further, both victim and perpetrator may be male, or both female, as in parent-child, sibling, or same-sex relationships.

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37 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. viii.

38 National Domestic and Family Violence Bench Book, *Terminology*, 2019, accessed 11 December 2019, <<https://dfvbenchbook.aija.org.au/terminology/>>.

39 Australian Bureau of Statistics, *Victims of Family and Domestic Violence-Related Offences*, Canberra, June 2019, Table 23.

40 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Queensland Government, 28 February 2015, p. 4.



## The effect of COVID-19

The COVID-19 pandemic has affected the way we all live, but it has had a particularly negative impact on people at risk of family violence. In requiring people to isolate and stay at home to prevent the spread of the novel coronavirus, some people have been at great risk of experiencing family violence.<sup>41</sup>

All the evidence internationally is that we can expect that this pressure of COVID—the social isolation, the economic destabilisation that's occurred—will actually give perpetrators of domestic violence additional opportunities to exercise control and power and to be violent.<sup>42</sup>

It is therefore more important than ever that victims of family violence have access to court processes, legal representation and support services, to help them leave a violent situation and minimise further harm.

The Committee was also unable to undertake some of its planned investigations due to the impact of these restrictions, affecting its evidence gathering. In particular, the Committee was unable to complete its scheduled travel to the Barndimalgu Aboriginal Family Violence Court.

The Committee gathered the majority of its evidence prior to social distancing and movement restrictions being implemented. These restrictions have no doubt affected how courts, legal services and support services operate in ways of which the Committee is unaware. The Committee has made findings and recommendations based on its evidence, but recognises that some of these may not be able to be implemented, or may need to be implemented in alternative ways, until after the pandemic-related restrictions are lifted.

Further, the Committee is cognisant that there may be operational changes arising out of necessity in response to the pandemic that improve the general accessibility, efficiency and effectiveness of the MCWA's management matters involving FDV. The Committee encourages the MCWA to assess the effect of any changes forced by the pandemic, and consider whether these changes may be adopted in the longer term.

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41 The Hon. John Quigley MLA, Attorney General, and the Hon. Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence, *New laws to protect family violence victims during COVID-19 pandemic*, media release, 2 April 2020.

42 The Hon. Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence, quoted in a news article by Briana Shepherd, 'Coronavirus pressures see extra focus placed on family and domestic violence', *ABC News* (web-based), 9 April 2020, accessed 12 May 2020, <<https://www.abc.net.au/news/2020-04-09/coronavirus-family-and-domestic-violence-fears-grow/12136652>>.



## Chapter 2

# What family and domestic violence is, and who it affects

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### What family and domestic violence is

There is no one definition nor descriptor of family and domestic violence. Terminology used varies across sectors and jurisdictions, and across legislation, and terms are often used interchangeably.<sup>43</sup>

For the purposes of its inquiry, the Committee took its understanding of FDV from the definitions the Magistrates Court of Western Australia (MCWA) uses in exercising its civil and criminal jurisdictions in relation to matters involving FDV. These definitions are set out in the following section.

*The community's understanding and appreciation of the dynamics and complexity of family violence has evolved dramatically over the past decade.*

*– The Magistrates' Society of Western Australia*

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### The *Restraining Orders Act 1997* incorporates a broad definition of family and domestic violence

The 2017 changes to the *Restraining Orders Act 1997* (RO Act) that introduced the Family Violence Restraining Order (FVRO) also introduced a new, contemporary definition of 'family violence' that captures the complex and often patterned nature of family violence. It recognises that 'violence' is not limited to physical or sexual violence, but may also include emotional and/or psychological abuse or injury.<sup>44</sup> While the most common and pervasive instances of family violence occur within intimate partner relationships,<sup>45</sup> this definition recognises that violence also exists within other family relationships.

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43 National Domestic and Family Violence Bench Book, *Terminology*, 2019, accessed 11 December 2019, <<https://dfvbenchbook.aija.org.au/terminology/>>.

44 Submission 23, The Magistrates' Society of Western Australia, p. 3.

45 Victoria Health, *Chief Psychiatrist's guideline and practice resource: family violence*, n.d., accessed 3 May 2020, <<https://www2.health.vic.gov.au/about/key-staff/chief-psychiatrist/chief-psychiatrist-guidelines/family-violence-guideline-practice-resource>>.

For the purposes of the MCWA's FVRO jurisdiction, family violence is defined as:

- (a) violence, or a threat of violence, by a person towards a family member of the person;  
or
- (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.<sup>46</sup>

A person is a family member of another person if they are in a family relationship, which is defined to be a relationship between two persons:

- who are, or were, married
- who are, or were, in a de facto relationship
- who are, or were, related to each other
- including a child who ordinarily or regularly resides, stays or resided or stayed with the other person
- who have, or had, an intimate personal relationship or other personal relationship.<sup>47</sup>

The recently enacted *Family Violence Legislation Reform Act 2020* (FV Reform Act) extended the definition of 'family relationship' to capture a relationship between two persons 'one of whom is the former spouse or former de facto partner of the other person's current spouse or current de facto partner.'<sup>48</sup>

In the context of the RO Act, 'related' is a broadly defined term that requires the consideration of cultural, social or religious backgrounds of two people to determine if it applies. It also specifies that one person is related to a second person if the first person is related to the second person's spouse or former spouse (or de facto partner).<sup>49</sup>

An 'other personal relationship' is a broad category to capture relationships which may not fit into one of the above categories, yet is a domestic relationship where the lives of persons are interrelated, with the actions of one person affecting the other.<sup>50</sup>

This broad definition recognises that, although the majority of FDV reported to authorities happens in intimate relationships, FDV can occur in all types of familial-type or personal relationships—including between parents and children, between siblings, or between former and current partners.

The RO Act includes a non-exhaustive list of examples of behaviour that may constitute family violence. These include, with respect to a family member:

- assault
- sexual assault
- stalking or cyber-stalking

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<sup>46</sup> *Restraining Orders Act 1997*, (WA), s. 5A.

<sup>47</sup> *ibid.*, s. 4.

<sup>48</sup> *Family Violence Legislation Reform Act 2020*, (WA), s. 53.

<sup>49</sup> *Restraining Orders Act 1997*, (WA), s. 4.

<sup>50</sup> *ibid.*

- repeated derogatory remarks
- damaging or destroying property
- causing death or injury to an animal
- unreasonably denying financial autonomy or financial support
- preventing making or keeping connection with family, friends or culture
- deprivation of liberty
- distributing an intimate image
- causing a child to be exposed to the above behaviour.<sup>51</sup>

**There is no definition of family and domestic violence in the Magistrate Court of Western Australia's criminal jurisdiction**

As the types of behaviour that could constitute FDV are many and varied, there is no one criminal offence amounting to FDV. Rather, a number of offences in the *Criminal Code* would amount to FDV if there was a family relationship between the offender and victim.

For certain offences, including offences against the person such as assault, a family relationship is one of several 'circumstances of aggravation'.<sup>52</sup> If an offence is committed in circumstances of aggravation, a longer term of imprisonment or higher penalty may apply. For the purposes of these offences, a family relationship has the same meaning as in the RO Act.<sup>53</sup>

Amendments recently passed by the FV Reform Act exclude an offender from the operation of aggravating penalties if the offender was a child at the time, and the only aggravating circumstance(s) was that the offender was in a family relationship with a victim, and/or there was a child present.<sup>54</sup>

The FV Reform Act also introduced a new offence of persistent family violence, which introduces a number of FDV specific definitions. A person 'persistently engages in family violence if the person does an act of family violence on 3 or more occasions' on different days over a period of up to 10 years against the same person.<sup>55</sup>

An 'act of family violence' is an act that would constitute a prescribed offence<sup>56</sup> done by a person against a person with whom they are in a designated family relationship. A designated family relationship is defined to be a relationship between two persons:

- who are, or were, married
- who are, or were, in a de facto relationship; or

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<sup>51</sup> *Restraining Orders Act 1997*, (WA), s. 5A.

<sup>52</sup> *The Criminal Code*, (WA), s. 221. Note: the *Family Violence Legislation Reform Act 2020* introduces some additional offences for which a family relationship is a circumstance of aggravation.

<sup>53</sup> *The Criminal Code*, (WA), s. 221.

<sup>54</sup> *Family Violence Legislation Reform Act 2020*, (WA), s. 4.

<sup>55</sup> *ibid.*, s. 6.

<sup>56</sup> Includes ss. 221BD, 298, 301, 304(1), 313, 317, 317A, 323, 338B, 338C, 338E or 444(1)(b) of *The Criminal Code*.

- who have, or had, an intimate personal relationship with each other.

This definition is therefore more limited than the definition under the RO Act, which includes people who are ‘related’ and a category of ‘other personal relationship’.

### **Family and domestic violence can affect anyone, but some groups experience significantly higher rates**

The majority of FDV incidents known to authorities involve a male perpetrator and female victim who are or have been in an intimate relationship; however, FDV can occur in all types of family relationships. For example, in a ‘family feud’ type situation, or between parents and their adult children.<sup>57</sup> One witness to the inquiry noted that adolescent to parent violence was an emerging problem.<sup>58</sup> Anyone can be a victim, or perpetrator, of FDV,<sup>59</sup> regardless of gender or sexual orientation. FDV is not limited to one section of society; it is not based on socio-economic circumstance, race, religion or creed.<sup>60</sup>

### **Women are more likely to be victims, and men are more likely to be perpetrators, of family and domestic violence**

A recent publication from the Australian Institute of Health and Welfare (AIHW) reported that ‘women were overwhelmingly the victims of these types of violence.’<sup>61</sup> The greatest risk of physical or sexual violence and emotional abuse against women comes from their partners.<sup>62</sup> Since the age of 15, one in six women had experienced physical and/or sexual violence from a current or previous cohabiting partner, compared with one in 16 men.<sup>63</sup>

*‘Although family and domestic violence affects victims of all genders and background, we know that the overwhelming majority of victims are women and children and the majority of perpetrators are men.’*

*– Ms Michelle Andrews,  
Department of Communities*

In its 2014 report on FDV, the Law Reform Commission of Western Australia stated that FDV is mainly perpetrated by men against women.<sup>64</sup> The AIHW report stated that sexual assault victims are more likely to be women, and perpetrators are more likely to be men.<sup>65</sup> Not all of the sexual assaults included in the AIHW report were FDV (in 13% of incidents the

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57 Magistrate Deen Potter, The Magistrates’ Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p3.

58 Domestic Violence Prevention Centre Gold Coast Inc., *Briefing*, 28 February 2020.

59 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. 8.

60 Submission 23, The Magistrates’ Society of Western Australia, p. 4.

61 Note: the report looked at family and domestic violence and sexual violence.

62 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. 8.

63 *ibid.*

64 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 11.

65 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. 17.

perpetrator was a stranger); however, in 52%, the perpetrator was an intimate partner, and for a further 18% of incidents, the perpetrator was a boyfriend or date.<sup>66</sup>

Although men and women are represented more evenly as victims of FDV homicides (59% female and 41% male), men are significantly more likely than women to be the perpetrators of FDV homicides (75% male).<sup>67</sup> Most female victims of homicide in Australia are killed by a current or former male intimate partner.<sup>68</sup>

Despite unsubstantiated claims to the contrary made in several closed submissions, the Committee unequivocally accepts that women make up the overwhelming majority of victims of family and domestic violence.

**Finding 1**

Women are significantly more likely to be victims of family and domestic violence, and men are more likely to be perpetrators of family and domestic violence.

**Aboriginal Western Australians continue to be significantly overrepresented as victims of family and domestic violence**

In his 2015 report, the Ombudsman reported that Aboriginal people comprised 33% of victims of FDV offences, despite Aboriginal and Torres Strait Islander people making up only 3.1% of the state's population.<sup>69</sup> Aboriginal people experience FDV at significantly higher rates than other Australians. Nationally, Aboriginal adults were 32 times more likely to be hospitalised from FDV than non-Aboriginal adults.<sup>70</sup> Aboriginal women are 45 times more likely to be victims of FDV than non-Aboriginal women, and 10 times more likely to be the victims of homicide.<sup>71</sup>

Aboriginal Family Law Services notes that the ramifications of FDV are also evident through other indicators. For example, Aboriginal children are overrepresented in the child protection system, comprising 53% of children in out of home care in Western Australia. This rises to 100% in the East Kimberley.<sup>72</sup> This correlation between FDV and children living in out of home care is an important consideration for government and support services; an Aboriginal woman may be less willing to report FDV for fear that her children may be taken away.<sup>73</sup>

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66 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. 17.

67 *ibid.*, p. 50.

68 Australian Institute of Criminology, *Homicide in Australia 2017–18*, Statistical Report 23, Canberra, 2020, p. 12.

69 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 7.

70 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. ix.

71 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 107.

72 Submission 16A, Aboriginal Family Law Services, p. 3.

73 Royal Commission into Family Violence, *Summary and recommendations*, Victorian Government, March 2016, p. 23.

**Finding 2**

Aboriginal Western Australians continue to be significantly overrepresented as victims of family and domestic violence.

**Children, people with disability, people from culturally and linguistically diverse backgrounds, LGBTIQ+ people and other cohorts are also more vulnerable groups**

The AIHW also identified a number of other groups who experience higher levels of FDV or sexual violence. Children, older people, people with disability, people from cultural and linguistically diverse (CALD) backgrounds, LGBTIQ+ people, people in rural and remote Australia, and people from socioeconomically disadvantaged areas are all reported to experience violence at higher levels than average.<sup>74</sup>

Children and young people are a particularly vulnerable group, and FDV significantly affects their physical and mental wellbeing.<sup>75</sup> The AIHW reports that 2.5 million adults have experienced physical and/or sexual abuse before they were 15 years old. Physical abuse was most often perpetrated by a parent. Children are also affected by witnessing FDV between family members, even if violence is not specifically directed at them.<sup>76</sup>

Elder abuse is violence towards an older person that occurs within a relationship where there is an expectation of trust.<sup>77</sup> There is limited statistical evidence of the prevalence of elder abuse, and even less information specifically about FDV against older people, which is a type of elder abuse. It is estimated that only 1 in 24 cases of elder abuse is reported.<sup>78</sup> This may be because victims do not want to disclose violence by a family member, or are dependent on that family member for care.<sup>79</sup> As at June 2018, the World Health Organisation suggests that '[a]round 1 in 6 people 60 years and older experience some form of abuse in community settings during the past year.'<sup>80</sup> Of reported cases, women disproportionately outnumber men as victims. The most commonly reported types of family violence toward older people are emotional and financial abuse.<sup>81</sup>

Data on the prevalence of FDV amongst people with a disability is limited. One study suggests that people with a disability were around 1.8 times more likely than people without a disability to have experienced violence with a current or former cohabiting partner in the year before the study. People with a disability may be susceptible to additional forms of FDV,

74 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, pp. viii–ix.

75 Submission 27, Commissioner for Children and Young People (Western Australia), p. 1.

76 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. viii.

77 World Health Organisation, *Elder Abuse*, 8 June 2018, accessed 11 June 2020, <<https://www.who.int/news-room/fact-sheets/detail/elder-abuse>>.

78 *ibid.* Note: this refers to all cases of elder abuse, not just those instances that occur within a family relationship.

79 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, pp. 84–85.

80 World Health Organisation, *Elder Abuse*, 8 June 2018, accessed 11 June 2020, <<https://www.who.int/news-room/fact-sheets/detail/elder-abuse>>.

81 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, pp. 84–85.



such as reproductive control, forced or withheld medical treatment, and forced isolation or restraint.<sup>82</sup>

There has been no substantive Australian research conducted on FDV among people from CALD backgrounds,<sup>83</sup> although research specific to certain types of violence within certain cultural groups has been conducted. Female genital mutilation and forced marriage, often occurring overseas on children and young women living in Australia, are areas of concern for people from some CALD backgrounds.<sup>84</sup> Further, refugees and immigrants to Australia experiencing FDV may face additional issues leaving a violence situation, for example, if they are on a spousal visa.<sup>85</sup>

The LGBTIQ+ community includes individuals who identify as lesbian, gay, bisexual, transgender, intersex, queer or otherwise diverse in gender, sex or sexuality.<sup>86</sup> Australian studies have found that the LGBTIQ+ community experiences FDV at similar or higher rates than heterosexual couples.<sup>87</sup> The AIHW reports that 'women who identified as lesbian, bisexual and mainly heterosexual were twice as likely to report physical abuse by a partner as women who identified as exclusively heterosexual.'<sup>88</sup> Further, a 2017–18 Western Sydney University and ACON study found that almost two thirds of gay, bisexual, transgender, intersex and queer men surveyed had experienced physical, verbal or emotional abuse in a relationship.<sup>89</sup> LGBTIQ+ people can also experience specific types of FDV, including threatening to out a partner, or hindering or forcing transition.<sup>90</sup>

Women living in regional and remote regions also report experiencing FDV at higher rates than women in metropolitan regions. People living in regional and remote regions statistically consume more alcohol, and have greater access to firearms, which increases the risk of partner violence. Living far from family, friends and support services can also make it more difficult for a person to leave a violent relationship.<sup>91</sup>

Studies show that FDV increases as financial stress and economic hardship increases. The AIHW reports that women and men living in the lowest socioeconomic areas at the time of 2016 survey experienced greater rates of FDV than women and men living in the highest socioeconomic area. Experiencing FDV can also cause financial hardship as survivors must often find new accommodation, and may lose income as a result of physical and emotional injury and participating in court processes.<sup>92</sup>

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82 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, pp. 90–91.

83 *ibid.*, p95.

84 *ibid.*, pp. 95–96, 98.

85 *ibid.*, p. 97.

86 *ibid.*, p. 99.

87 Submission 40, Living Proud LGBTI Community Services of WA, p. 2.

88 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, pp. viii–ix.

89 *ibid.*, pp. viii–ix.

90 Submission 40, Living Proud LGBTI Community Services of WA, p. 3.

91 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, 2019, p. 101.

92 *ibid.*, pp. 102–103.

**Finding 3**

Certain cohorts may be more vulnerable to family and domestic violence and experience it at higher rates. Further research into the prevalence of family and domestic violence in these vulnerable cohorts would better inform targeted responses.

**COVID-19 may lead to an increase in family violence**

Research shows that periods of stress and hardship, such as the current COVID-19 public health emergency, can contribute to increased incidents of family violence, although there is never any excuse for FDV.<sup>93</sup> Combined with restrictions on movement to reduce the spread of coronavirus, many people have been at greater risk of family violence whilst being confined to unsafe homes with seemingly limited or reduced opportunity to leave a violent situation. COVID-19 can also be incorporated into violence, such as misusing health information to control or frighten a person, or withholding access to necessary items such as medicine and hand sanitiser.<sup>94</sup>

Although it is too soon to understand the full extent of the pandemic on incidents of family violence, initial reports suggest that the expected increase in family violence incidents eventuated. National counselling service 1800 RESPECT reported a 38% increase in its online chat tool between March and April 2020.<sup>95</sup> A Victorian survey of family violence victim support practitioners found that the pandemic had increased the frequency and severity of violence against women.<sup>96</sup>

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93 Domestic Violence Resource Centre Victoria, *For survivors during coronavirus*, 26 March 2020, accessed 11 June 2020, <<https://www.dvrcv.org.au/help-advice/coronavirus-covid-19-and-family-violence/survivors-during-coronavirus>>.

94 *ibid.*

95 Henry Zwartz, 'Amid coronavirus lockdowns, use of online domestic violence reporting tool spikes', *ABC News* (web-based), 23 May 2020, accessed 11 June 2020, <<https://www.abc.net.au/news/2020-05-23/coronavirus-lockdown-domestic-violence-spikes-in-australia/12238962>>.

96 Tammy Mills, 'New reports of family violence spike in COVID-19 lockdown, study finds', *The Age* (web-based), 8 June 2020, accessed 11 June 2020, <<https://www.theage.com.au/national/victoria/new-reports-of-family-violence-spike-in-covid-19-lockdown-study-finds-20200607-p55096.html>>.

## Chapter 3

### Greater resourcing can improve timeliness

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#### Family violence related court proceedings are taking too long to be finalised

One of the Committee's primary reasons for embarking on this inquiry was reports about how long it took for matters to be finalised. Between 2016–2017 and 2018–2019, the median time to trial for all matters (not just FDV-related matters) before the Magistrates Court of Western Australia (MCWA) was 25 weeks, six weeks above the target of 19 weeks.<sup>97</sup> For Family Violence Restraining Order (FVRO) matters, time to trial has varied in monthly data for the past three years. In April 2018 the average time to trial peaked at 28 weeks, but in April 2019 this was only 10 weeks.<sup>98</sup> Both sets of data provide averages only and, given the number of matters, may not give an accurate picture of the time to trial for less complex versus more complex matters.

The Committee received anecdotal evidence of FVRO matters taking significantly longer than they should. Ms Kedy Kristal of the Women's Council for Domestic and Family Violence Services provided an example of a client's application for a FVRO which had still not been finally settled three years after the application was first made.<sup>99</sup> The Committee received other submissions where objections to interim FVROs had not been heard within eight months, nine months and 14 months respectively.<sup>100</sup>

*'Timeliness and accessibility around court processes is... [a] significant and clear theme that came through the submissions.'*

*– Magistrate Deen Potter,  
The Magistrates' Society of  
Western Australia*

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#### Finding 4

The Magistrates Court of Western Australia is taking too long to hear and finalise Family Violence Restraining Order matters.

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97 Department of Justice, *Annual Report 2018/19*, Western Australia, 23 September 2019, p. 166.

98 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, Email with Family Violence Restraining Orders Report, 12 September 2019, p. 9.

99 Ms Kedy Kristal, Women's Council for Domestic and Family Violence Services, *Transcript of Evidence*, 27 November 2019, p. 12.

100 Closed submissions.

## Delays are problematic for numerous reasons

The delay in hearing initial FVRO applications, or ongoing FVRO and criminal proceedings, may cause numerous problems, including:

- A survivor may be left unprotected by a Police Order if it expires before an application for an FVRO can be heard, which is often the case for matters outside the Perth Magistrates Court.<sup>101</sup>
- Some applicants may be put off applying for an FVRO if the court they attend cannot hear the application on the same day, or if it is suggested that they attend a different registry to have the application heard more promptly.<sup>102</sup>
- Parties incur increased costs as a result of extended court matters including loss of income, child care costs and legal costs.<sup>103</sup>
- Delays can cause significant emotional distress to applicants who want certainty about a final FVRO being made.<sup>104</sup>
- Delays can cause emotional distress to respondents who may be bound by an interim FVRO to which they object.<sup>105</sup>
- Parties' views may become entrenched, making it more difficult for issues to be resolved.<sup>106</sup>
- Memories fade, potentially affecting evidence.<sup>107</sup>
- Parties may reconcile, making witnesses in criminal matters reluctant to testify.<sup>108</sup>
- A victim may be deterred from participating in a criminal process, contributing to a real prospect of acquittal.<sup>109</sup>
- Wasted MCWA resources where proceedings are adjourned as parties are ill-prepared or deliberately trying to delay proceedings.<sup>110</sup>
- Delays in MCWA matters may affect the timeliness of related matters in other jurisdictions, and vice versa.<sup>111</sup>

### Finding 5

There are significant negative effects for the Magistrates Court of Western Australia and court users caused by delays in hearing and finalising Family Violence Restraining Order matters.

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101 Submission 12, Women's Council for Domestic and Family Violence Services, p. 3; Submission 17, Gosnells Community Legal Centre Inc., p. 1.

102 Submission 17, Gosnells Community Legal Centre Inc., p. 1.

103 Submission 20, Relationships Australia WA Inc., p. 4.

104 Submission 23, The Magistrates' Society of Western Australia, p. 5.

105 Closed submission.

106 Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 5.

107 Submission 23, The Magistrates' Society of Western Australia, p. 12.

108 *ibid.*

109 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 9.

110 Submission 20, Relationships Australia WA Inc., p. 4.

111 Closed submission; Submission 15A, Children's Court of Western Australia, p. 2.

## Current resource levels affect court efficiency and timeliness

The timeliness of matters being heard and resolved depends on a number of factors—court location, the availability of appropriate interpreting or translation services, whether an interim FVRO is objected to, and the behaviour of parties. However, the lack of resources to deal with the increasing number of matters has the biggest impact on the efficiency of the courts.

Although the Perth Magistrates Court has sufficient demand and resources to have a dedicated court to hear initial FVRO applications,<sup>112</sup> magistrates in suburban courts are not sufficiently resourced to deal with urgent FVRO applications in addition to their normal workloads. As such, applicants may be referred to the Perth Magistrates Court to have their application dealt with on the same day, placing additional pressure on the resources of that court, or be asked to return another day for the application to be dealt with at the suburban court.<sup>113</sup>

*‘...a lack of resources within the judiciary itself, within the Magistrates Court, in being able to deal with these issues. The need is not being met by the resources that are available.’*

— Ms Linda Cao,  
Aboriginal Family Law Services

Many regional courts do not have full time magistrates; one magistrate will travel between multiple courts.<sup>114</sup> Where a magistrate is not available when an urgent FVRO application is made, the matter may be heard by a magistrate at another location via videolink.<sup>115</sup>

Regional magistrates also often have enormous workloads and deal with a range of matters,<sup>116</sup> including on behalf of other court jurisdictions. Aboriginal Family Law Services argued that ‘there is a need for more magistrates and for a greater number of courthouses for them to be operating from.’<sup>117</sup>

## Increasing numbers of Family Violence Restraining Order applications has put further pressure on resources

In recent years, there has been a steady increase in the number of restraining order applications made to the MCWA and Children’s Court of Western Australia (CCWA).

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112 Submission 10, Chief Magistrate of Western Australia, p. 1.

113 *ibid.*, pp. 1–2.

114 *ibid.*

115 *ibid.*, p. 2; The Hon. John Quigley MLA, Attorney General, *Magistrates to hear court matters State-wide for the first time*, media release, 3 July 2020.

116 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 5.

117 *ibid.*

**Table 3.1: Restraining order applications and outcomes in the Magistrates Court of Western Australia and the Children’s Court of Western Australia<sup>118</sup>**

	2016–2017	2017–2018	2018–2019
Violence Restraining Order applications	13,937	14,436	15,853
FVRO applications	8,650	10,586	11,975
FVRO Interim orders granted	5,088	7,064	8,267
Objections to FVRO interim orders	2,518	3,433	3,933
Final FVRO orders granted after objection	432	631	662

**Notes on numbers:**

- The number of Violence Restraining Orders applications includes FVRO applications.
- The number of FVRO applications includes applications for a Violence Restraining Order, before FVROs were introduced, where the relationship between the respondent and the applicant is classified as ‘domestic’.
- Only first instance applications and orders are included.

Between 2016–2017 and 2018–2019, applications for Violence Restraining Orders (VROs) increased by 14%. During the same period, there has been a 38% increase in applications for FVROs, including VRO applications prior to the introduction of FVROs where the relationship between the parties was classified as ‘domestic’. This is a staggering contrast, although it may be partly attributable to the data not capturing some VROs where there was a family relationship between the parties. Between 2017–2018 and 2018–2019, applications for FVROs increased by 13%, compared to an increase of almost 10% for VROs.

Submissions from the Chief Magistrate, President of the CCWA and a community legal centre stated that funding for the MCWA and the CCWA has not kept pace with the increase in the number of matters;<sup>119</sup> it does not match ‘the overwhelming demand for assistance and judicial intervention.’<sup>120</sup> Courts are becoming ‘gridlocked’ due to significant increases in applications for FVROs which is not simply attributable to population growth.<sup>121</sup>

The Department of Justice acknowledged that the MCWA has ‘challenges in keeping up with the volume’ of FVRO matters.<sup>122</sup> However, the only opportunity it saw for reducing time to trial in FVRO matters was with additional magistrates.<sup>123</sup>

118 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, Email with Family Violence Restraining Orders Report, 12 September 2019, pp. 3–6; Submission 32, Department of Justice, p. 4.

119 Magistrate Deen Potter, Magistrates Court of Western Australia, *Briefing*, 30 October 2019; Submission 19, Northern Suburbs Community Legal Centre Inc., p. 4; Judge Julie Wager, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 1.

120 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 4.

121 Submission 23, The Magistrates’ Society of Western Australia, p. 8.

122 Ms Joanne Stampalia, Department of Justice, *Transcript of Evidence*, 13 November 2019, p. 1.

123 *ibid.*, pp. 6–7.

#### **Finding 6**

Current judicial resources in the Magistrates Court of Western Australia and the Children's Court of Western Australia are insufficient to deal with the significant number of applications for Family Violence Restraining Orders.

### **More magistrates and staff are needed to improve timeliness**

Although the MCWA has processes in place to assist in the more timely resolution of matters,<sup>124</sup> without being provided with sufficient resources to manage the increasing number of matters before the court, timeliness will remain an issue. Increasing the number of magistrates, and associated staff, is necessary.

The Committee notes the appointment of two additional magistrates and assisting staff to the MCWA in September 2018 to reduce time to trial. However, the median time to trial for all matters (not just FDV-related matters) in 2018–2019 remained at 25 weeks, six weeks above the budget target of 19 weeks, due to an increase in charges per case and an increase in the number of matters going to trial.<sup>125</sup> Clearly, further resources are needed.

On 3 July 2020, the Attorney General announced that all MCWA matters, including FVRO applications, will be heard by magistrates.<sup>126</sup> Improved videolink technology and the appointment of two additional magistrates, announced on 31 July 2020, will enable the court to shift away from relying on Justices of the Peace to hear matters, especially in regional and remote areas.<sup>127</sup> The Committee is supportive of this decision, particularly in the context of FVRO applications.

The two additional magistrates are intended to replace existing unpaid resources, and are therefore not 'new' resources. The Committee considers it unlikely that the new magistrates will have an impact on the current delays in hearing contested FVRO matters, as indicated by the time to trial figures. More magistrates, and associated staff, are needed to hear current volumes of FVRO matters in a timely manner.

#### **Recommendation 1**

That the Attorney General ensures funding for the appointment of additional magistrates in the Magistrates Court of Western Australia and Children's Court of Western Australia, as required to deal with applications for Family Violence Restraining Orders in a timely manner in both metropolitan and regional Western Australia.

124 For example, the MCWA deals with final FVRO hearings separately from criminal matters so it can do so in a timely manner. See Submission 10, Chief Magistrate of Western Australia, p. 2.

125 Department of Justice, *Annual Report 2018/19*, Western Australia, 23 September 2019, p. 41.

126 The Hon. John Quigley MLA, Attorney General, *Magistrates to hear court matters State-wide for the first time*, media release, 3 July 2020.

127 *ibid.*





## Chapter 4

### **Specialist, experienced and trained magistrates and staff improve accessibility**

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#### **Magistrates and court staff are key to an efficient and accessible Magistrates Court of Western Australia**

Knowledgeable magistrates and court staff are key to ensuring that the Magistrates Court of Western Australia (MCWA) provides efficient access to justice for those affected by family and domestic violence.

Magistrates determining matters involving FDV must be knowledgeable not just about FDV-related law, but also about the dynamics of FDV, how it presents and how it affects people. This knowledge is gained through experience, formal training, and informal sharing of information between colleagues.

Similarly, MCWA staff must be knowledgeable about the dynamics of FDV to provide support and advice to court users. A lack of appreciation for the complex ways in which FDV affects court users could lead to inappropriate responses, potentially affecting the willingness of users to engage in court processes. Staff also need training in the dynamics of FDV to varying degrees, depending on their level of contact with court users.

Importantly, the mental health and wellbeing of magistrates and court staff must be given due consideration. Working in an environment where a person is regularly exposed to traumatic information is challenging, and without appropriate recognition and support, can be incredibly harmful. The MCWA must support its magistrates and staff to minimise the effect of vicarious trauma.

#### **Magistrate family and domestic violence experience and training**

Throughout this inquiry, the Committee has tried not to impinge upon the 'integrity and institutional independence of the courts'.<sup>128</sup> The Committee's terms of reference specifically excluded reviewing the decisions or conduct of magistrates, and individual matters before the court. It is in this context that the Committee makes the following broad comments about magistrate experience and training, based on the evidence it received during the inquiry.

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<sup>128</sup> Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 1.

### **Lack of knowledge about the dynamics of family and domestic violence can contribute to inconsistency in magistrates' decision making**

In 2014, the Law Reform Commission of Western Australia (LRCWA) raised concerns about the:

lack of awareness and understanding of the nature and dynamics of family and domestic violence and the resulting inconsistency in decision making and approaches of professionals working in the justice system. Apart from the potential of this inconsistency to result in inappropriate decisions it also means that the legal system has the potential to itself become a further barrier to victims seeking help.<sup>129</sup>

Although magistrates did attend some FDV education programs,<sup>130</sup> the LRCWA recommended that the Western Australian Government resource courts to provide regular judicial education programs in relation to the nature of FDV.<sup>131</sup>

Today, all Western Australian magistrates receive some FDV training. Newly appointed magistrates attend a National Magistrates Orientation Program, which includes a two-hour session on FDV.<sup>132</sup> There is also an annual magistrates conference which routinely includes an FDV component.<sup>133</sup> *Ad hoc* FDV training is also available. Legal Aid Western Australia provided magistrates with training on the impact of the FDV-related changes to residential tenancies.<sup>134</sup> The National Judicial College of Australia delivered a one-day FDV training program to magistrates in October 2017. The Attorney General has recently agreed to fund all new magistrates to attend this program.<sup>135</sup>

*'Judicial education and continuing legal education are key to ensuring ongoing professional development and awareness of family and domestic violence issues.'*

*– Magistrate Andrée Horrigan,  
Children's Court of Western Australia*

The online National Domestic and Family Violence Bench Book can also assist magistrates in their decision making. Created by the Australasian Institute of Judicial Administration, the Bench Book arose out of the Australian Law Reform Commission's and New South Wales Law Reform Commission's 2010 review into the country's legal response to family and domestic violence. Its purpose is to:

provide a central resource for judicial officers considering legal issues relevant to domestic and family violence related cases that will contribute to harmonising the

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129 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 19.

130 Submission 10A, Chief Magistrate of Western Australia, pp. 2–3.

131 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 70, p. 177.

132 Submission 31, National Judicial College of Australia, p. 1.

133 Submission 10, Chief Magistrate of Western Australia, p. 7.

134 Submission 32, Department of Justice, p. 12.

135 Submission 31, National Judicial College of Australia, p. 1.

treatment of these cases across jurisdictions along broad principles and may assist them with decision-making and judgment writing.<sup>136</sup>

However, during the course of this inquiry, witnesses raised concerns about magistrates' understanding of the dynamics of FDV<sup>137</sup> and how this affects magistrate decision making.

One submitter suggested that the outcome of a Family Violence Restraining Order application was often dependent on the magistrate presiding over the matter, rather than the merits of the application.<sup>138</sup> Another witness suggested that some magistrates may not have an adequate skill base to deal with matters involving FDV.<sup>139</sup> While some magistrates generally seemed to be across the issues,<sup>140</sup> others did not seem to understand the intricacies of FDV, for example that violence can be non-physical such as coercive control.<sup>141</sup>

Although there has been an increase in judicial FDV education funding and programs over time,<sup>142</sup> the evolving understanding of the dynamics of FDV, as well as ongoing concerns about magistrates' FDV knowledge, indicates that more and ongoing training is required.<sup>143</sup> As The Magistrates' Society of Western Australia submitted, 'an essential component of any response to Family Violence in the Magistrates Courts will necessarily be the ongoing availability of continuing professional development for Magistrates...'.<sup>144</sup>

The Judicial College of Victoria (JCV) has developed a framework for the types of FDV skills and knowledge magistrates need depending on their position. This framework ensures that magistrates at different stages of their career, and who specialise in FDV to different extents, can receive the appropriate level of training for their role.<sup>145</sup> In Queensland, magistrates presiding over FDV lists attend a two-day annual FDV conference.<sup>146</sup> The MCWA could leverage off the work done by the JCV, Queensland Courts and similar organisations, to implement a comprehensive FDV training program in Western Australia.

The Committee acknowledges that magistrates have significant workloads,<sup>147</sup> and scarce time to attend training. However, the importance of FDV training cannot be understated, and the Committee encourages the Department of Justice to work with the MCWA, magistrates and education providers to develop a comprehensive FDV training program. Training should include information on how FDV can manifest and present differently

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136 National Domestic and Family Violence Bench Book, *Purpose and limitations*, July 2019, accessed 4 May 2020, <<https://dfvbenchbook.aija.org.au/purpose-and-limitations/>>.

137 Mr Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 4; Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2020, p. 5.

138 Submission 30, Community Legal Western Australia, p. 5.

139 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2020, p. 5.

140 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 5.

141 Submission 24, Centrecare Inc., p. 4.

142 Submission 10A, Chief Magistrate of Western Australia, pp. 2–3.

143 Submission 19, Northern Suburbs Community Legal Centre Inc., pp. 5–6.

144 Submission 23, The Magistrates' Society of Western Australia, p. 2.

145 Judicial College of Victoria, *Briefing*, 25 February 2020.

146 Submission 36, Queensland Courts, p. 2.

147 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2020, p. 5.

amongst varying cohorts—for example, types of abuse specific to the LGBTIQ+ community,<sup>148</sup> and culturally and linguistically diverse (CALD) communities.

**Finding 7**

Some magistrates lack knowledge about the dynamics of family and domestic violence, and this can contribute to inconsistent decision making.

**Finding 8**

Ongoing training about the dynamics of family and domestic violence, including how it can present differently in different cohorts, can improve magistrate decision making in family and domestic violence related matters.

**Recommendation 2**

That the Attorney General, in consultation with the Chief Magistrate, funds the development of a comprehensive and ongoing family and domestic violence training program for all magistrates to assist them in their decision making in family and domestic violence related matters. This ongoing training program should be mandatory for all magistrates that deal with family and domestic violence matters. The training should include information on how family and domestic violence can present differently amongst different cohorts.

***Cultural change must accompany training for it to be truly effective***

When the JCV was first established in 2002, the judiciary and the legal profession more broadly tended to view on-the-job training as more important, and placed limited value on formal training courses. Over time, the legal profession began to appreciate the importance of formal training and the work of the JCV, and today, the college has overwhelming support from the professionals that it supports.<sup>149</sup>

Improving magistrate decision making for FDV matters is not simply about increasing FDV knowledge through judicial education and training. That training needs to be well attended, valued and put into practice. The Committee was encouraged by the commitment to improvement demonstrated by magistrates it heard from during the course of this inquiry, particularly the Chief Magistrate. This enthusiasm may not be shared by all magistrates across the state, and it can take time for these ideas to permeate. Court leadership is vitally important to not only encourage magistrates to attend training, but demonstrate to them the value of improving their knowledge.

**Finding 9**

For family and domestic violence training to be truly effective, and to be consistently implemented in practice, it must be championed by court leadership to demonstrate the value of engaging in ongoing training and putting this knowledge into effect.

148 Submission 40, Living Proud LGBTI Community Services of WA, pp. 3–4.

149 Judicial College of Victoria, *Briefing*, 25 February 2020.

### **Magistrates are now required to understand the dynamics of family and domestic violence to be appointed**

Magistrates deal with a diverse range of criminal and civil matters.<sup>150</sup> Although some magistrates specialise, many magistrates, particularly those in regional locations, must be across every type of matter that comes before the court. It is therefore all but impossible to ensure that magistrates have experience in every type of matter they must preside over prior to becoming a magistrate. However, the nature of FDV, the potential consequences of poor decision making,<sup>151</sup> and the increasing numbers of FDV matters presenting to the court, make this an area worthy of additional focus by magistrates.

In 2014, the LRCWA recommended that the selection criteria for magistrates include 'knowledge of the nature and dynamics of family and domestic violence and experience with legal issues concerning family and domestic violence.'<sup>152</sup> The Department of Justice amended the selection criteria for new magistrates to include a requirement that new magistrates have an 'understanding of the dynamics of family and domestic violence' in August 2019.<sup>153</sup>

The Committee is pleased with the introduction of this requirement. It notes the appointment of six magistrates to the MCWA in August 2020.<sup>154</sup> The Committee is not aware if the amended selection criteria were part of this recruitment process, and is interested to understand how the requirement is interpreted and weighted in magistrate recruitment processes.

#### **Finding 10**

Prospective magistrates are now required to have an understanding of the dynamics of family and domestic violence prior to appointment. However, it is unclear how this requirement is interpreted and weighted as part of the magistrate recruitment process.

### **Specialising in family and domestic violence matters leads to greater expertise in this area, and better outcomes for court users**

*An Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport* in Queensland (see Box 11.2) found that the magistrates at the court who specialise in FDV matters 'were consistently described positively in terms of their interest and experience in domestic violence.'<sup>155</sup> Specialist magistrates were generally seen to be more proactive (than non-specialist magistrates), and were 'able to achieve consistency in court process and

150 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 5.

151 Submission 30, Community Legal Western Australia, p. 5.

152 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 72, p. 177.

153 Submission 32, Department of Justice, p. 12.

154 The Hon. John Quigley MLA, Attorney General, *Six new magistrates to strengthen court's regional presence*, media release, 31 July 2020.

155 Griffith Criminology Institute, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports*, Griffith University, Gold Coast, February 2017, pp. 46–47.

outcome'.<sup>156</sup> Magistrates themselves considered that they knew the legislation in-depth, had a better understanding of the dynamics of FDV, and were more aware of FDV-related support systems and services.<sup>157</sup>

In Western Australia, magistrates can specialise in FDV matters, primarily criminal, in metropolitan Magistrates courts.<sup>158</sup> The Chief Magistrate may choose a magistrate to specialise in FDV because she or he has a particular interest or preparedness to work in the area. Initially, the specialist magistrate may not have any more FDV-related experience or knowledge than any other magistrate as all are currently provided with the same FDV training. However, the specialist magistrate will build up their skills and knowledge over time by working in the area.<sup>159</sup>

Unfortunately, many Western Australian Magistrates courts, particularly those in regional areas, do not have a sufficient number of matters to operate a dedicated list for a specialist magistrate to preside over. All magistrates cannot, therefore, build their FDV knowledge and experience in the same way as specialist FDV magistrates. It remains important for all MCWA magistrates to have ongoing FDV training.

The Committee considers there are significant benefits to having specialist FDV magistrates, as demonstrated by the Southport court evaluation. In addition to more effectively managing matters involving FDV, including as part of dedicated FDV lists, specialist magistrates can also take on leadership roles at the court, providing guidance and support to less experienced magistrates, or those who deal with FDV matters infrequently. Specialist magistrates should also be supported by attending additional FDV training, similar to that provided by the JCV (discussed above).

#### **Finding 11**

There are significant benefits to magistrates specialising in matters involving family and domestic violence, including greater knowledge of the dynamics of family and domestic violence and related law, and the ability to more effectively manage such matters. Specialist family and domestic violence magistrates can also provide leadership and support to non-specialist magistrates.

#### **Recommendation 3**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who specialise in family and domestic violence hear family and domestic violence matters wherever possible.

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156 Griffith Criminology Institute, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports*, Griffith University, Gold Coast, February 2017, pp. 46–47.

157 *ibid.*

158 Submission 10A, Chief Magistrate of Western Australia, p. 3.

159 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 4.

#### **Recommendation 4**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who specialise in family and domestic violence matters are supported to become experts in the area by participating in additional training. This should take the form of a formalised accreditation process.

#### **Recommendation 5**

That the Attorney General, in consultation with the Chief Magistrate, ensures that magistrates who are appointed to regional and remote areas have undertaken the appropriate family and domestic violence training and accreditation.

### **Court staff family and domestic violence training and education**

Family and domestic violence matters are core business for the MCWA,<sup>160</sup> and court staff are at the front line. How a staff member responds to a person presenting at court with an FDV-related issue can affect that person's experience of the court process, and their ongoing willingness to participate. MCWA staff work hard to respond to the needs of court users, yet if they do not have access to appropriate FDV training, their response could have unintended consequences.

In 2014, the LRCWA recommended that all court staff receive specific FDV training.<sup>161</sup> Currently, while MCWA staff have access to a variety of training to assist them in the workplace,<sup>162</sup> the only compulsory FDV-related training is an online Family Violence Restraining Orders module.<sup>163</sup> Other than this, optional training courses can be attended as part of a staff member's professional development.<sup>164</sup>

It is important that court staff who come into contact with FDV survivors, 'receive regular training from experts in the area of family violence.'<sup>165</sup> Ms Katalin Kraszlan, A/Commissioner for Victims of Crime suggested that:

Individuals in the legal system who work with family violence victims and survivors should have an understanding of:

- The nature and dynamics of family violence, including the various types of abuse, the impact of ongoing behaviours of coercion and control and the ways in which it can occur;
- The impacts of family violence on adults and children, in particular the long term impacts of trauma and how this is reflected in behaviour; and

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160 Submission 38, Legal Aid Western Australia, p. 3.

161 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 71, p. 177.

162 Submission 33A, A/Commissioner for Victims of Crime, p. 2.

163 Submission 32, Department of Justice, p. 12.

164 Submission 33A, A/Commissioner for Victims of Crime, p. 2.

165 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 5; Submission 23, The Magistrates' Society of Western Australia, p. 2.

- The particular experiences of Aboriginal and Torres Strait Islander communities.<sup>166</sup>

Victoria is currently rolling out training for staff and key stakeholder organisations at five specialist family violence courts. Staff attend a three-day intensive multi-disciplinary training session run by the JCV. The training is tailored to the experience of the court, and issues within the local community.<sup>167</sup> Some of this training is being transitioned to online delivery during the COVID-19 pandemic whilst face to face training is not able to take place. MCWA courts that have a dedicated Family Violence List or hear a significant number of FDV matters would benefit from receiving similar levels of training.

Ms Kraszlan noted that the Department of Justice is currently considering opportunities to provide MCWA staff with specific family violence training. She also noted that the changes resulting from the *Family Violence Legislation Reform Act 2020* will be supported by a training committee, which will provide information bulletins and education materials to Department of Justice staff, including staff at the MCWA.<sup>168</sup>

Introducing FDV accreditation would be one way to ensure relevant court staff possess a sufficient understanding of family violence.<sup>169</sup> The Executive Director of the Courts and Tribunal Services directorate at the Department of Justice noted that an accreditation program may be challenging to deliver to all court staff who have some level of contact with people involved in FDV matters before the court. However, she was open to accreditation of specialist staff, such as those working from the Family Violence Service and Victim Support Service.<sup>170</sup>

#### **Finding 12**

Magistrates Court of Western Australia staff are the front line response to court users experiencing family and domestic violence, and must be sufficiently trained to perform this role.

#### **Recommendation 6**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that sufficient funding is available to provide all Magistrates Court of Western Australia staff with initial and ongoing training on the nature and dynamics of family and domestic violence. This should be prioritised for staff who interact with family and domestic violence victims or perpetrators, and particularly those working in court locations that offer some specialist family and domestic violence services, to enable the staff to provide an appropriate and effective service.

166 Submission 33, A/Commissioner for Victims of Crime, p. 5.

167 Judicial College of Victoria, *Briefing*, 25 February 2020.

168 Submission 33A, A/Commissioner for Victims of Crime, p. 2.

169 *ibid.*, p. 5.

170 Ms Joanne Stampalia, Department of Justice, *Transcript of Evidence*, 13 November 2019, pp. 7–8.



### Recommendation 7

That the Attorney General ensures that the Department of Justice develop a family and domestic violence accreditation system for staff providing services in the Magistrates Court of Western Australia.

This training and accreditation system could be made available to other service providers who regularly interact with the court system and offer services within MCWA settings.

### Cultural awareness training for magistrates and staff

The nuances and dynamics of FDV can vary between different cultural groups. It is important that magistrates and court staff are aware of differences so that the court can consider the impact of culture in processes and proceedings. Training should be tailored to the different demographics at each court location.

Improving awareness of Aboriginal cultures should be given precedence, as Aboriginal people are overrepresented as victims of FDV, and comprise a significant proportion of people appearing in court and in the prison population.<sup>171</sup> Aboriginal people often have a different experience of FDV than non-Aboriginal people. For Aboriginal communities, 'the prevalence and impact of family and domestic violence is understood in terms of loss of connection to family, culture and self.'<sup>172</sup> There are many complex issues that contribute to this characterisation,<sup>173</sup> and it is important that judicial officers, and court staff, appreciate this so that court outcomes are appropriate.

Magistrates currently receive limited cultural awareness training. New magistrates receive some training at the National Magistrates Orientation Program, and a cultural awareness element is generally included at the annual magistrates conference.<sup>174</sup> The Committee received no evidence about cultural awareness training for court staff.

The Committee considers a more comprehensive cultural awareness training program would be beneficial for magistrates and court staff. It would be appropriate for training to focus on Aboriginal culture, tailored for different language groups around the state, as well as CALD groups, depending on the demographics at different court locations.

### Finding 13

The nuances of family and domestic violence can vary between different cultural groups, particularly for Aboriginal people and some culturally and linguistically diverse communities.

171 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 12.

172 Submission 16, Aboriginal Family Law Services, p. 3.

173 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 6.

174 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 12.

### Recommendation 8

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that magistrates and court staff participate in cultural awareness training. This training should be tailored for different court locations depending on the demographics of the area.

## The wellbeing of magistrates and court staff

Magistrates and court staff regularly interact with traumatised people, hearing stories and seeing images of the violence they have endured. At times, magistrates and staff may feel like the structural constraints of the court system, and time constraints resulting from large number of matters before them, limits the help they can provide. It is not uncommon for people in this setting to experience vicarious trauma because of exposure to the trauma of other people as part of their work.<sup>175</sup>

To support mental health, each magistrate is rostered off one day a quarter to enable them to attend a one-hour session with a psychologist. Magistrates are rotated through specialist Family Violence Lists, and no magistrate hears FDV-related matters every day, so no magistrate is constantly exposed to the trauma of FDV.<sup>176</sup> The Chief Magistrate has found this to be a good model for managing magistrates' mental health.<sup>177</sup> Collegiality between magistrates is also important to help recognise if a magistrate's mental health is affected so additional support may be offered.<sup>178</sup>

For MCWA court staff, there is no specific support service, other than the employee assistance program which is available to all public servants. Staff are encouraged to raise wellbeing concerns with their managers, and managers are encouraged to look out for their staff.<sup>179</sup>

The JCV maintains a resource on judicial wellbeing which contains research and information, including access to support services, on judicial stress, mental health, wellbeing and getting help.<sup>180</sup> The JCV has also been working with the Magistrates' Court of Victoria to understand its specific wellbeing issues. This has led to the creation of the Magistrates' Court of Victoria's Judicial Wellbeing Strategic Plan.<sup>181</sup> In 2019, The JCV also ran a two-day Judicial Peer Support program designed to give participants tools to identify and support a colleague in distress.<sup>182</sup>

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175 Deborah Wood Smith, National Centre for State Court, *Secondary or Vicarious Trauma Among Judges and Court Personnel*, April 2017, accessed 27 May 2020, <<https://www.ncsc.org/trends/monthly-trends-articles/2017/secondary-or-vicarious-trauma-among-judges-and-court-personnel>>.

176 Submission 10, Chief Magistrate of Western Australia, p. 7.

177 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 4.

178 *ibid.*

179 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 10.

180 Judicial College of Victoria, *Judicial Wellbeing Resources*, n.d., accessed 6 May 2020, <<https://www.judicialcollege.vic.edu.au/resources/judicial-wellbeing-resources>>.

181 Magistrates' Court of Victoria, *2017–18 Annual Report*, Victoria, 2018, p. 6.

182 Judicial College of Victoria, *Judicial Peer Support*, n.d., accessed 6 May 2020, <<https://www.judicialcollege.vic.edu.au/programs-and-events/judicial-peer-support>>.

Vicarious trauma can contribute to mental health issues and burn out at work. All organisations in which workers are exposed to trauma as part of their employment should have a plan in place to identify vicarious trauma risk and manage wellbeing.<sup>183</sup> Magistrates and staff, particularly staff in a supervisory capacity, should also receive training about vicarious trauma, including how to recognise it, and how to support yourself and peers.

**Finding 14**

Magistrates and Magistrates Court of Western Australia staff regularly interact with and hear stories from people traumatised by family and domestic violence, leaving them at risk of vicarious trauma, burn out and mental health issues.

**Recommendation 9**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that the Magistrates Court of Western Australia develops a properly accredited vicarious trauma plan to identify risk and manage magistrate and court staff wellbeing.

**Recommendation 10**

That the Attorney General, in consultation with the Chief Magistrate and the Department of Justice, ensures that funding is available for magistrates and Magistrates Court of Western Australia staff to attend properly accredited vicarious trauma training. This should focus on strategies to help them cope with the traumatic information they are exposed to in the course of their work, as well as how to identify and support colleagues experiencing associated mental health issues.

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183 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 11.



## Chapter 5

### Legal services improve accessibility

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#### **Access to legal services improves court accessibility**

The importance of legal representation for all parties involved in Magistrates Court of Western Australia (MCWA) proceedings was a key theme throughout this inquiry. Access to legal services for court users can provide a whole range of benefits, including making the process faster and less confusing, achieving better outcomes, and reducing breaches of Family Violence Restraining Orders (FVROs).<sup>184</sup>

Unfortunately, many court users are unable to access sufficient legal services to support them through court processes. Limited availability of publicly funded services, and the potential cost of private legal services, mean participants in legal proceedings are often unrepresented, to their detriment, and the detriment of the court.

Legal representation is essential and integral to the FVRO process. Ideally, all parties should have legal representation.

#### **Legal services provide benefits to the court and its users**

FVRO applicants and respondents having access to legal advice and representation throughout the court process provides significant benefits for all those involved in the process.

#### **Legal services empower a family and domestic violence victim to make choices**

It can be difficult for an FDV victim to know what to do, particularly when they are uncertain about their future and suffering emotional distress. Accessing legal services can inform a family violence survivor about their options, empowering them to make choices and exercise their rights.<sup>185</sup>

Often FDV victims do not seek legal advice prior to coming to court. Many applicants arrive at a courthouse to apply for an FVRO without any understanding of the process, without having spoken to a lawyer or other advisor, and without knowing anyone who can provide help.<sup>186</sup> It is important to have access to legal services at the court.

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<sup>184</sup> Submission 30, Community Legal Western Australia, p. 6.

<sup>185</sup> Submission 38, Legal Aid Western Australia, p. 9.

<sup>186</sup> Submission 12, Women's Council for Family and Domestic Violence Services, p. 6.

### Legal services make the process faster

Magistrates are busy. A magistrate's daily list may have upwards of 50 to 60 matters, which means they do not have time to walk an unrepresented FVRO party through the court process, or elicit the information needed to meet evidentiary requirements. Legal representation for applicants and respondents can help get to the crux of a matter faster; lawyers can identify points of agreement and disagreement to help narrow down contested issues. It may also support early resolution, reducing the need for matters to proceed to a time consuming hearing or trial.<sup>187</sup>

*'...there is a view that lawyers involved in the process slow it down. It is our experience that the earlier the lawyers are involved in the process and explain to people their rights and responsibilities, it actually makes the whole process much quicker and easier.'*

*– Ms Sharryn Jackson,  
Community Legal Western Australia*

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Legal representation of an accused in criminal proceedings can also speed up court processes, whilst reducing the impact on victims of crime. 'Often a lawyer can negotiate with the prosecution an agreed set of material facts or an amended charge which achieves the desired balance of offender acceptance of responsibility and accountability whilst relieving victims of the distress of protracted and uncertain court processes.'<sup>188</sup> This is particularly important if an accused is remanded in custody.

### Legal services make the process clearer

Court proceedings can be confusing. Most parties to FVRO matters do not regularly participate in court proceedings, and therefore have limited understanding of court rules and processes.<sup>189</sup> Self-represented or unrepresented parties may not have sufficient experience with court proceedings to fully understand the rules of evidence, process to be followed, orders made nor the consequences of legal proceedings.<sup>190</sup> Lawyers can guide parties through court processes and explain outcomes.<sup>191</sup>

### Legal services help improve parties' decision making

Unrepresented parties are more likely 'to make the decision not to pursue a case or... agree to a less than satisfactory outcome because they do not have the knowledge, capability or confidence to represent themselves.'<sup>192</sup>

The Women's Council for Domestic and Family Violence Services (Women's Council) suggests that the lack of funding available for an applicant to have legal representation

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187 Submission 30, Community Legal Western Australia, p. 6.

188 Submission 23, The Magistrates' Society of Western Australia, p. 5.

189 Ms Ekaterini Blitz-Cokis, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 1.

190 Submission 38, Legal Aid Western Australia, p. 9; Submission 10, Chief Magistrate of Western Australia, p. 3.

191 Magistrate Andrée Horrigan, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 10.

192 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 5.

during a contested hearing results in applicants being forced to accept less than desirable alternatives, such as a conduct agreement.<sup>193</sup> A conduct agreement is not an admission by the respondent of any of the matters alleged in the FVRO application, but is otherwise taken to be an FVRO for the purposes of the *Restraining Order Act 1997*.<sup>194</sup> This is particularly important for FDV victims on a visa as a conduct agreement carries less weight than an FVRO for the purposes of providing evidence of FDV for immigration purposes.<sup>195</sup>

Decision making may also be compromised in matters involving FDV where there is a history of violence and intimidation that contributes to a power imbalance between the parties. This is exacerbated when only the respondent is legally represented.<sup>196</sup> The Women's Council raised a concern that respondents who are aware of the limited legal aid funding may be more demanding in negotiations for a resolution, knowing that the applicant cannot afford to take the matter to a final hearing.<sup>197</sup>

Access to legal advice means clients are informed about their options for continuing court proceedings, their prospects of success and earlier opportunities for resolving the dispute.

### **Legal services for respondents are more limited but can provide great benefits**

FVRO respondents are often not able to access duty lawyer services (see Boxes 5.1, 5.2 and 5.3), and have limited access to publicly funded legal services; however, many witnesses noted the benefits, for both applicants and respondents, of respondents being legally represented.<sup>198</sup>

Lawyers can provide respondents with objective legal advice about the conditions of an interim or final FVRO, what their options are once served with an interim FVRO, and about their prospects of success if objecting to an interim FVRO. The Northern Suburbs Community Legal Centre Inc. (NSCLC), which provides a respondents' duty lawyer services, notes that through this service lawyers 'are able to "reality check" the arguments and intended evidence of the respondent.' NSCLC's experience 'has been that providing clear, informed and firm legal advice about the near-impossibility of a respondent's objection being successful, and the potential court costs upon failure, will often clarify the options' for the respondent.<sup>199</sup>

Legal advice for respondents can potentially diffuse tension, reduce FVRO breaches, and may help to reach a resolution without needing time consuming, emotionally draining and potentially expensive court proceedings.<sup>200</sup> This may reduce applicant stress, as well as save the court time.<sup>201</sup>

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193 Submission 12, Women's Council for Family and Domestic Violence Services, p. 5.

194 *Restraining Orders Act 1997*, (WA), s. 10H.

195 Submission 12, Women's Council for Family and Domestic Violence Services, p. 6.

196 Submission 10, Chief Magistrate of Western Australia, p. 4.

197 Submission 12, Women's Council for Family and Domestic Violence Services, p. 4.

198 Submission 38, Legal Aid Western Australia, p. 9.

199 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 8.

200 Submission 23, The Magistrates' Society of Western Australia, p. 5.

201 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 2.

## Legal services help parties navigate multiple jurisdictions and services

As discussed in Chapter 1, FDV issues often overlap with other legal issues. A recent survey found that respondents in FDV matters 'were 10 times more likely than others to experience legal problems other than domestic violence, including a wide range of family, civil and crime problems.'<sup>202</sup> In many cases, one set of circumstances gives rise to proceedings in the MCWA's civil and criminal jurisdictions, and in the Family Court of Western Australia (FCWA).

*'For the best of us, that is difficult to navigate, and without that legal representation it is very, very hard.'*

– Magistrate Jennifer Hawkins, *The Magistrates' Society of Western Australia*

If a person is a party to proceedings in multiple jurisdictions, confusion is compounded as different jurisdictions, magistrates and registries have different processes.<sup>203</sup> Although there may be good reasons for these differences, such as 'the volume and complexity of matters and the availability of judicial officers',<sup>204</sup> they may still be confusing for parties.

### Finding 15

There are significant benefits for the court and parties to Family Violence Restraining Order applications when both the applicant and respondent receive appropriate legal advice and are legally represented during court proceedings.

## More free and low cost legal services are needed

Many people involved in FDV-related court proceedings do not have the financial resources to pay private lawyers' fees.<sup>205</sup> Costs can escalate quickly, particularly when there are repeated appearances, or matters are drawn out.<sup>206</sup> Many people find themselves in a 'sandwiched class' where their income is sufficient to exclude them from a grant of public or *pro bono* legal assistance, yet insufficient to fund private legal services.<sup>207</sup>

Some lawyers are adopting new methods to reduce costs or make costs more manageable and predictable, such as moving away from billable hours to more competitive fee structures<sup>208</sup> and 'unbundling' legal services, where the lawyer and client agree that the lawyer will only undertake some discrete tasks or limited scope representation.<sup>209</sup> Further innovation should be encouraged to bridge the gap between increasing access to justice and

202 Christine Coumarelos, 'Quantifying the legal and broader life impacts of domestic and family violence', *Justice Issues*, Paper 32, Law and Justice Foundation of New South Wales, June 2019, p. 1 quoted in Submission 30, Community Legal Western Australia, p. 4.

203 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 6.

204 Submission 32, Department of Justice, p. 4.

205 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 5.

206 Submission 20, Relationships Australia WA Inc., p. 4.

207 Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report Overview*, Australian Government, Canberra, 5 September 2014, p. 20; Centre for Innovative Justice, *Affordable Justice – a pragmatic path to greater flexibility and access in the private legal services market*, RMIT University, Melbourne, October 2013, p. 7.

208 Justice Bernard Murphy, 'The Problem of Legal Costs: Lump Sum Costs Orders in the Federal Court', speech presented at The National Costs Law Conference, 17 February 2017.

209 Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report Overview*, Australian Government, Canberra, 5 September 2014, p. 20.



allowing private legal practices to remain commercially viable, without discounting the value of independent and expert legal advice or compromising protections for clients.<sup>210</sup>

Until this occurs, the problem remains that there is significant demand for publicly funded legal services, and not enough resources to meet this demand.

### **Duty lawyer services need to be available for all Family Violence Restraining Order parties**

Many submitters highlighted the invaluable service duty lawyers provide to people who apply for an FVRO at metropolitan Magistrates courts. However, demand for these services exceeds the current resourcing level, leaving some applicants without access to legal services when applying for an FVRO.<sup>211</sup>

Legal Aid Western Australia (LAWA) provides the most publicly funded FDV-related legal services in the State, and is the primary provider of duty lawyer services for FVRO applicants.<sup>212</sup> LAWA receives state government funding each year to provide its services, and decides how that funding should be allocated between these services based on 'demand for services, levels of disadvantage and available funds.'<sup>213</sup> However, LAWA must provide services to people facing serious criminal charges. Providing duty lawyers in the MCWA's criminal jurisdiction requires significant funding, leaving limited funding for it to provide duty lawyers for FDV-related matters in the civil jurisdiction.<sup>214</sup>

*'There is an urgent need to increase the number and availability of duty lawyer services at the Courts.'*

*– Community Legal Western Australia*

In the metropolitan region, LAWA's current funding allows it to provide FVRO duty lawyer services at Perth and Joondalup Magistrates Courts only.<sup>215</sup> The duty lawyer service available at the Children's Court of Western Australia (CCWA) does not extend to FVRO matters, meaning children and parents must represent themselves when applying for an FVRO, unless they can access and afford private legal representation.<sup>216</sup> This is a highly unsatisfactory situation.

Awareness of the unavailability of FVRO duty lawyer services at the CCWA may also lead to children and families preferring to make FVRO applications in the MCWA rather the CCWA, placing additional pressure on the MCWA. The CCWA has a number of co-located services available that are not available at Magistrates courts.<sup>217</sup> CCWA registry staff are trained to deal with children and young people, and are therefore better able to assist these applicants

<sup>210</sup> Centre for Innovative Justice, *Affordable Justice – a pragmatic path to greater flexibility and access in the private legal services market*, RMIT University, Melbourne, October 2013, p. 13.

<sup>211</sup> Submission 10, Chief Magistrate of Western Australia, p. 4.

<sup>212</sup> Submission 38, Legal Aid Western Australia, p. 2. Note: at certain courts a duty lawyer service is provided by a Community Legal Centre.

<sup>213</sup> Submission 38A, Legal Aid Western Australia, p. 2.

<sup>214</sup> *ibid.*, p. 4.

<sup>215</sup> *ibid.*, p. 3.

<sup>216</sup> Submission 15A, Children's Court of Western Australia, p. 2.

<sup>217</sup> Judge Julie Wager and Magistrate Andrée Horrigan, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, pp. 12–13; Submission 29, Magistrate Andrée Horrigan, p. 4.

than staff in MCWA registries who do not have specific training or experience in dealing with children and young people.<sup>218</sup> This may mean while children can access legal representation at the MCWA, they miss out on other supports available at the CCWA.

LAWA provides limited FVRO duty lawyer services in regional areas, primarily at the Albany and Kununurra courthouses, depending on demand.<sup>219</sup> Some of LAWA's regional duty lawyer services are funded by Commonwealth Government funding for family law matters, which can also be applied to related matters including to people applying for an FVRO through the FCWA Magistrates division.<sup>220</sup>

#### **Finding 16**

There is an urgent need to increase the availability of duty lawyer services for parties to Family Violence Restraining Order applications in both the Magistrates Court of Western Australia and the Children's Court of Western Australia.

#### **Box 5.1: Legal Aid Western Australia Metropolitan Duty Lawyer Services**

Legal Aid Western Australia provides a duty lawyer service to FDV victims applying for a Family Violence Restraining Order (FVRO) at Perth Magistrates Court. This service is provided five days a week. Prior to 2017 the service was provided by a sole duty lawyer working in the mornings only. Since 2017, a sole duty lawyer is available in mornings and afternoons, and is supported by a triage paralegal and a social support worker. The following services can be provided to FDV victims:

- Advice
- Representation on interim FVRO applications
- Advice, representation, negotiation and referrals at PMC Trial allocation lists
- Negotiations with other parties
- Drafting of consent orders and undertakings
- Applications for adjournments
- Applications for appearance by closed circuit television or other vulnerable witness protections
- Referral to social support services (including refuges and counselling)
- Advice and referral on family law matters
- Liaison with Western Australia Police Force (Police) and the Department of Communities
- Risk Assessment and Safety Planning
- Counselling

Legal Aid Western Australia commenced a duty lawyer service for victims of family violence at Joondalup Magistrates Court appearing at callover/mention hearings. The service is offered one day a fortnight. Current services available include:

- Advice
- Negotiations with other parties
- Drafting of consent orders and undertakings
- Applications for adjournments
- Applications for appearance by closed circuit television or other vulnerable witness protections
- Referral to social support services
- Advice and referral on family law matters
- Liaison with Police and the Department, where appropriate

Neither duty lawyer service is specifically funded by the government.

Source: Submission 38A, Legal Aid Western Australia.

218 Submission 15, Children's Court of Western Australia, p. 2.

219 Legal Aid Western Australia, *Find a duty lawyer service*, n.d., accessed 22 April 2020, <<https://www.legalaid.wa.gov.au/get-legal-help/get-legal-help/get-help-court/find-duty-lawyer-service>>.

220 Submission 38, Legal Aid Western Australia, p. 10.

### **Respondents also need access to duty lawyers**

Most duty lawyer services only provide legal advice or representation to applicants in FVRO matters. The NSCLC provides a publicly funded duty lawyer service to respondents, but only at Joondalup Magistrates Court. The program receives only \$57,000 funding annually.<sup>221</sup> Other community legal centres may provide duty lawyer services at specific courts to respondents depending on who approaches the centre for assistance.<sup>222</sup>

***‘The provision of duty solicitors for both applicants and respondents, as well as support staff, should be available at every court that is dealing with FDV-related matters. There is no question about that.’***

*– Ms Sharryn Jackson,  
Community Legal Western Australia*

The Law Reform Commission of Western Australia recommended in 2014 that FVRO respondents, in addition to applicants, should be given access to legal advice at all court locations across the state.<sup>223</sup> Evidence received by this inquiry supported the provision of duty lawyer services for both applicants and respondents in FVRO matters.

LAWA stated there would be ‘considerable benefit in both victims and respondents’ having access to duty lawyer services across all MCWA locations. In their submission, LAWA pointed to the success of the Family Advocacy and Support Services at the FCWA, which was recently expanded to include a dedicated men’s worker.<sup>224</sup>

The provision of duty lawyers to provide advice and representation for both parties in Domestic Violence Protection Order matters heard at Queensland’s Specialist Domestic and Family Violence Courts (DFV Court)<sup>225</sup> was also considered a positive feature of these courts by representatives of the Southport DFV Court, and of the Domestic Violence Prevention Centre Gold Coast Inc.<sup>226</sup> An evaluation of the Southport DFV Court found that providing a duty lawyer for respondents allowed respondents the opportunity to make more informed decisions, and sped up the court process.<sup>227</sup>

#### **Finding 17**

**There is a significant deficit in the availability of duty lawyer services for respondents to Family Violence Restraining Order applications.**

221 Ms Ekaterini Blitz-Cokis, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 2.

222 Ms Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 5.

223 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 29, p. 101.

224 Submission 38, Legal Aid Western Australia, p. 5.

225 Submission 36, Queensland Courts, p. 2.

226 Southport Specialist Domestic and Family Violence Court, *Briefing*, 28 February 2020; Domestic Violence Prevention Centre Gold Coast Inc., *Briefing*, 28 February 2020.

227 Griffith Criminology Institute, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports*, Griffith University, Gold Coast, February 2017, p. 30.

**Recommendation 11**

That the Attorney General urgently ensures a significant increase in funding for duty lawyer services for both applicants and respondents in Family Violence Restraining Order matters in both the Magistrates Court of Western Australia and the Children's Court of Western Australia. This funding should be sufficient to ensure that all applicants and respondents can access legal advice and representation.

**Box 5.2: Restraining Order and Respondents Program**

The Northern Suburbs Community Legal Centre (NSCLC) operates the Restraining Order and Respondents (ROAR) Program at Joondalup Magistrates Court one day a fortnight, which is the day the court allocates for new objections to interim restraining orders, including Family Violence Restraining Orders (FVROs). The ROAR program provides advice and support to anyone who is a respondent in a restraining order matter.

The NSCLC duty lawyer advises respondents on:

- The legal effect of a restraining order on the restrained person in their personal circumstances, including what they can and cannot lawfully do under the order.
- A full outline of their options for resolving a dispute.
- Clarification about the risks of taking an objection to trial, including legal costs potentially being awarded to victims.
- Negotiating on the restrained person's behalf to reach an agreement that protects all parties.
- Where applicable, representing the respondent at the first mention.
- Provision of appropriate information on external family and domestic violence services to seek support and assistance.

Based on an audit of 2018–19 case files, 113 respondents were assisted as part of the ROAR program, approximately 62% of which were FVRO respondents. Of these, 78.6% were male, 7.14% identified as Aboriginal, and 5.7% required an interpreter. Respondents self-reported other issues they were facing; 21.4% reported drug and alcohol use, 74.28% reported financial hardship, 34.3% reported a mental health issue or disability, and 14.3% identified as being at risk of homelessness.

Of the FVRO cases that NSCLC was involved in, 25.7% of cases resulted in court orders, 38.6% in negotiated conduct agreement orders, 20% in undertakings, and 15.7% had an 'other' outcome.

Sources: Submissions 19 and 19A, Northern Suburbs Community Legal Centre Inc.

### **There is a lack of funding for legal services in contested Family Violence Restraining Order matters**

As outlined above, the MCWA, applicants and respondents all benefit when both applicants and respondents are legally represented at contested hearings. However, often FVRO parties are not legally represented.<sup>228</sup>

Based on their current levels of funding, LAWA is often not able to provide legal representation for contested hearings. While a LAWA duty lawyer may assist an applicant to apply for an interim FVRO, the applicant would need to apply for a grant of legal aid to receive ongoing legal representation. According to LAWA's *Eligibility Guidelines for Legal Assistance in State Matters*, aid may only be granted in 'special circumstances'. These include 'where the applicant for aid establishes an ongoing history of violence and/or abuse

228 Submission 10, Chief Magistrate of Western Australia, p. 3; Submission 19, Northern Suburbs Community Legal Centre Inc., p. 5; Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 3.

and is unable to adequately represent herself or himself'.<sup>229</sup> One submission suggested that grants are only made in 'extreme' cases.<sup>230</sup>

Community legal centres provide legal advice and representation to some FVRO applicants and respondents.<sup>231</sup> The sector has experienced a significant increase in the demand for FDV-related legal services, without a corresponding increase in resources.<sup>232</sup> This increase in demand likely results from greater community awareness of FDV and options available to FDV survivors, and potentially from the impact of recent policy initiatives and legislative changes including the introduction of the FVRO type of restraining order in 2017.<sup>233</sup> For these positive changes to have full effect, they need to be supported by adequate resources.<sup>234</sup>

#### **Finding 18**

Legal Aid Western Australia and community legal centres currently receive inadequate funding to provide legal representation to parties at contested Family Violence Restraining Order hearings.

#### **Recommendation 12**

That the Attorney General ensures sufficient funding for Legal Aid Western Australia and community legal centres to provide representation to parties at contested Family Violence Restraining Order hearings.

229 Legal Aid Western Australia, *Manual of Legal Aid: Chapter 6B State Eligibility Guidelines*, Western Australia, 1 July 2006, p. 16.

230 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 5.

231 Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 4.

232 Submission 30, Community Legal Western Australia, p. 9.

233 *ibid.*, p. 4.

234 Submission 38, Legal Aid Western Australia, p. 10.

### Box 5.3: Community legal centres

Community legal centres 'are independent, non-profit organisations which provide legal services to disadvantaged and vulnerable people or those on low incomes who are ineligible for legal aid. There are existing community legal centres that are Aboriginal Community controlled and managed, specialised for culturally and linguistically diverse (CALD) communities, and for people with disabilities. Community legal centres offer a variety of legal services to their clients, including assistance with FDV-related matters.

The Northern Suburbs Community Legal Centre (NSCLC) was established in 1996 and is the largest generalist community legal centre in Western Australia. It has three offices, located in Mirrabooka, Joondalup and Wanneroo, that provide services primarily to people living in the northern suburbs. Its services include the Women's Resource and Engagement Network for women and children experiencing FDV, and the respondent duty lawyer services at Joondalup Court one day per fortnight (see Box 5.2).

The NSCLC employs lawyers, advocates, social workers, financial counsellors and client service officers. During 2018–19, it provided services to more than 2,400 people, and provided more than 5,000 advices, tasks and advocacy activities. FDV was identified as a risk factor in approximately 34% of matters.

The Gosnells Community Legal Centre provides a range of services to people in the South East metropolitan area of Perth. In addition to providing legal advice, it provides a duty lawyer service at the Armadale Magistrates Court and legal representation for FDV victims in Family Violence Restraining Order proceedings. It also provides legal advice services to Aboriginal and CALD FDV victims at the Armadale hospital.

Sources: Submission 30, Community Legal Western Australia; Submission 19, Northern Suburbs Community Legal Centre Inc.; Submission 17, Gosnells Community Legal Centre Inc.

### Legal Aid Western Australia funding is provided in different silos though matters may be related

LAWA receives funding from a number of sources. Commonwealth Government funding must be spent on Commonwealth matters, and Western Australian Government funding must be spent on state matters, with some exceptions. Where there is an overlap between state and Commonwealth matters e.g. FCWA and FVRO proceedings, Commonwealth funding can be applied to the state matter. However, funding is limited and demand is high.<sup>235</sup>

LAWA notes that 'it is more efficient for Federal and State funding to be able to be applied to related matters in different jurisdictions and does this where possible. However, current jurisdictional arrangements and the associated cultures and practices make this very difficult.'<sup>236</sup> LAWA also notes that the *ad hoc* and urgent manner of some proceedings, practitioner workload issues, and some private practitioners not practising in all jurisdictions, also impacts its capacity to assign the same lawyer to the same party across multiple jurisdictions.<sup>237</sup>

The Committee considers that the current funding arrangements should be simplified to provide greater flexibility for LAWA to be able to use Commonwealth funding on state matters, and vice versa, where matters are related and arising out of one set of

<sup>235</sup> Submission 38A, Legal Aid Western Australia, p. 5.

<sup>236</sup> *ibid.*, p. 6.

<sup>237</sup> *ibid.*

circumstances or one family. The Committee notes that this proposal would require cooperation between the Commonwealth and Western Australian Governments.

#### **Finding 19**

Legal aid funding for related matters involving family and domestic violence across different jurisdictions is often provided in different silos, resulting in inefficiencies.

#### **Recommendation 13**

That the Premier raises the issue of legal aid funding for related matters involving family and domestic violence with the National Cabinet with a view to simplifying funding arrangements to provide Legal Aid Western Australia with greater flexibility to apply Commonwealth funding to related State matters, and vice versa.

#### **There is a lack of funding for legal services providers in regional Western Australia, particularly for Aboriginal specific legal services**

FDV victims living in the regions have greater difficulty accessing affordable legal services due to a distinct lack of resources. Aboriginal Family Law Services is one of the few publicly funded legal services that provides legal representation in FVRO proceedings in regional Magistrates courts.<sup>238</sup> Other services, including LAWA and the Aboriginal Legal Service, may provide legal advice and support, but do not provide representation in regional courts for FVRO contested hearings.<sup>239</sup>

Having a legal service to provide services specifically to Aboriginal people is important. As discussed in Chapter 2, Aboriginal women are significantly overrepresented as victims of FDV, yet the relationship between Aboriginal people and government authorities does not encourage Aboriginal survivors of FDV to seek help from authorities.<sup>240</sup> A legal service staffed by local Aboriginal people who understand local culture and the unique difficulties that Aboriginal people have had to endure would provide a better service than a generalised organisation.<sup>241</sup>

#### **Box 5.4: Aboriginal Family Law Services**

Aboriginal Family Law Services is funded by the Department of the Prime Minister and Cabinet under the Family Violence Prevention Legal Services Program. It provides specialist FDV prevention services to six regions across Western Australia—West Kimberley, East Kimberley, Gascoyne, Midwest, Goldfields and Pilbara, covering 47% of Western Australia's Aboriginal population based on residence.

Source: Submission 16, Aboriginal Family Law Services.

238 Ms Corina Martin, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 1.

239 *ibid.*, p. 2.

240 *ibid.*, pp. 2–3.

241 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 3.

**Finding 20**

There is a significant lack of legal services available in regional areas for all parties to Family Violence Restraining Orders applications, especially for Aboriginal people.

**Recommendation 14**

That the Attorney General ensures sufficient funding for Legal Aid Western Australia, regional community legal centres and the Aboriginal Legal Service to provide a greater level of service in regional areas to parties to Family Violence Restraining Order applications.



## Chapter 6

### Support services improve accessibility

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#### **Support services are critically important for people affected by family and domestic violence**

For most people, going to court is unfamiliar, the processes are difficult to follow, the rules are confusing, and the formalities are complex. For a person who has survived family and domestic violence, there are additional layers of trauma from the experiences that have brought them to the court. This trauma may be compounded by having to continually re-tell their story, face the person who hurt them, risk not being believed or understood by the authorities, and potentially not getting a satisfactory outcome. While legal services (see Chapter 5) are important to guide parties through legal aspects of court proceedings, non-legal services are important to provide broader support, including assistance to understand processes, emotional support, safety planning and referrals to services external to the court.

FDV perpetrators and those accused of FDV also need access to non-legal support services throughout court processes, particularly to assist in compliance with court orders and access to rehabilitation services. A respondent served with an interim Family Violence Restraining Order (FVRO) may not know their rights nor how to respond. A perpetrator will likely not know where they can seek help to change their behaviour. Support services can complement legal services by helping FDV perpetrators and those accused of FDV understand their position and options, potentially diffuse tension, and help them get the support they need to address their underlying issues.

Providing non-legal support services to FVRO applicants and respondents, and the accused and victims in criminal proceedings, will lead to efficiencies in the Magistrates Court of Western Australia (MCWA). Supported parties will be able to better engage with court processes, witnesses in criminal proceedings may be less likely to withdraw from testifying, and FVRO respondents may be less likely to unnecessarily draw out proceedings.

People experiencing family violence also need access to services to support them outside of court, such as emergency accommodation, counselling and safety planning. Often people who engage in the court system for the first time have not previously accessed such support services.<sup>242</sup> They may experience other issues, such as homelessness, financial hardship, mental health issues and dependency on illicit substances.<sup>243</sup> The court can be a crucial touchpoint for service providers to engage with families affected by FDV, and provide support to address the underlying causes of FDV.<sup>244</sup>

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242 Brisbane Domestic Violence Service, *Briefing*, 28 February 2020.

243 Submission 23, The Magistrates' Society of Western Australia, p. 4; Submission 24, Centrecare Inc., p. 1.

244 Submission 38, Legal Aid Western Australia, p. 10.

This chapter discusses what court support services are currently available, and what else is needed. It also discusses how the MCWA can be an access point to connect people with FDV-related issues with service providers to assist them outside court processes.

### **Court support services are vital for parties to family and domestic violence related proceedings**

Support workers provide great assistance guiding people who experience FDV through civil and criminal court processes. They can:

Help an applicant apply for an FVRO, including assistance preparing an affidavit, reducing potential delays in making the application.

Explain court process and sit with an applicant in the courtroom, helping an applicant emotionally and mentally prepare for the experience and potentially reduce trauma.

Explain the magistrate's decision, and help the applicant understand what an order means.<sup>245</sup>

Such support promotes victim safety, and encourages victims to continue to support the prosecution of family violence offences. As the Law Reform Commission of Western Australia stated:

Support and assistance for victims is primarily undertaken by victim support workers: the importance of their role cannot be understated.<sup>246</sup>

However, the availability of support services varies significantly in Magistrates courts across the state. This means that court users can receive dramatically different levels of support, and their experience can vary significantly.

### **There are three main services available to support people through court processes**

The Department of Justice operates three main services to support survivors of FDV participating in MCWA court proceedings—Family Violence Service (FVS), Victim Support Service (VSS), and regional Victim Support and Child Witness Service (VSCWS). Details of these services are set out in Box 6.1, Box 6.2 and Box 6.3.

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245 Ms Kedy Kristal, Women's Council for Domestic and Family Violence Services, *Transcript of Evidence*, 27 November 2020, p. 4.

246 Law Reform Commission of Western Australia, *Court Intervention Programs: Final Report*, Project No. 96, Government of Western Australia, June 2009, p. 99.

**Box 6.1: Family Violence Service**

The Family Violence Service (FVS) provides support to FDV victims engaged in Family Violence List (FV List) criminal proceedings or in Family Violence Restraining Order (FVRO) proceedings. The FVS is available at Armadale, Fremantle, Joondalup, Midland, Perth and Rockingham.

The FVS is not a drop-in, urgent or crisis service. For each first appearance in the FV List, FVS sends information to the FDV survivor and offers support services. For FVRO matters, the applicant will be provided with information about the FVS after submitting the FVRO application. Engaging with the FVS is voluntary; after receiving information about the service the victim must choose to contact and request help from the FVS.

The support services include:

- provision of court information, including updates as a matter progresses through court
- assistance with understanding court processes
- in-court support and witness preparation
- assistance with completing court documents
- undertaking risk assessments and developing a safety plan
- writing risk assessment reports (such as bail risk assessments) for FV List matters, in collaboration with Western Australia Police Force and the Department of Communities
- advocacy and referral to other services, such as legal assistance, counselling, and criminal injuries compensation.

The FVS has 15 FTE paid staff, nine of which are classified as a 'specified calling', requiring a relevant tertiary qualification in social work.

The service also has 15 registered volunteers. There is no specific qualification requirement for volunteers, however they must have knowledge, skills and experience in providing similar support services. Volunteers receive training about service delivery requirements, volunteer tasks, and information on working with victims of family violence.

In 2017–2018, the FVS supported 4,323 clients. In 2018–2019, this decreased to only 3,844 clients.

Sources: Submissions 32 and 32A, Department of Justice.

***Demand for the Family Violence Service has been decreasing despite the number of incidents of family violence increasing***

Despite the significant increase in the number of FDV-related matters before the MCWA in recent years, demand for the FVS was decreasing.<sup>247</sup> This led to a review of the FVS service delivery model that commenced in 2016 and was completed by late 2019.

The review identified that the FVS was 'not working to its full resource capacity, was not responding to emerging trends within the family violence delivery sector (such as being available at locations where family violence survivors mostly attended), and was limiting the availability of its service delivery potential.'<sup>248</sup> This led to the introduction of a more centralised model, including a 1800 number and generic email address, in addition to being physically present in six MCWA locations.<sup>249</sup>

The Committee echoes the concerns of Magistrate Deen Potter, who questioned the efficacy of the centralised model, noting that 'the roll-back of having face-to-face contact on a daily

<sup>247</sup> Submission 32A, Department of Justice, p. 6.

<sup>248</sup> *ibid.*

<sup>249</sup> *ibid.*

basis at courthouses has clearly had an impact.<sup>250</sup> He noted that timeliness is critical in FDV matters, and that an FDV victim who has made the significant step of coming to court to apply for an FVRO would receive more timely assistance from speaking to someone at the court face-to-face, and is less likely to call a telephone number for support.<sup>251</sup>

The Department of Justice states that the FVS is now seeing an increase in the number of clients it helps, although this is not yet reflected in the information received by the Committee at the time of writing. The Department of Justice notes that the FVS continues to provide services to similar numbers of clients in person and in court, however it assists more clients via its telephone and email contact options.<sup>252</sup>

The Committee agrees with the suggestion of Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, that the new model will need to be reviewed after it has been operating for a time to assess the effect of the changes to the service. This review should not just consider the quantitative data, such as the volume of clients assisted by the service, but also the level and type of assistance and qualitative data such as the victim's experience in engaging with the service.<sup>253</sup>

#### **Finding 21**

Recent changes to the service delivery model of the Family Violence Service may have a negative effect on the quality and timeliness of the service provided to clients.

#### **Recommendation 15**

That the Attorney General conduct ongoing review of the Family Violence Service to measure both its quantitative and qualitative outcomes, including: the number of clients assisted, a breakdown of the mode of assistance, and client feedback on the quality of the service. The review should be conducted annually for the next three years and the results reported to Parliament in the Department of Justice's Annual Report.

#### ***Limited criteria restrict access to the Family Violence Service***

The FVS only provides services to FDV victims when the matter is part of the Family Violence List (see Chapters 9 and 10). If the accused pleads not guilty, the matter will be transferred to the general criminal list. The FDV victim will no longer be eligible for assistance from the FVS. If the client requests ongoing assistance, FVS will transfer the client's case to the VSS team (see Box 6.2).<sup>254</sup>

Both the FVS and the VSS operate within the Department of Justice's Court Counselling and Support Services directorate. The Department of Justice said that 'the managers of each

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250 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2020, p. 7.

251 *ibid.*

252 Submission 32A, Department of Justice, p. 6.

253 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 9.

254 Submission 32A, Department of Justice, p. 5.

Service work closely and collaboratively', therefore transferring clients from the FVS to the VSS is a 'smooth process' that is completed within 'short timeframes'.<sup>255</sup>

#### **Finding 22**

Strict criteria limit the ability of victims of family and domestic violence to access the specialist support services of the Family Violence Service throughout the entire court process.

#### **Box 6.2: Victim Support Service**

The Victim Support Service (VSS) provides support to victims of crime where there are criminal proceedings in the metropolitan Magistrates, District, and Supreme Courts. The VSS is based at the Perth District Court and, if requested, VSS workers may attend at Armadale, Fremantle, Joondalup and Midland Magistrates Courts.

The VSS provides the following services:

- a Victims Access Line, which assesses and responds to all calls, queries and referrals
- court witness assistance: in court, pre- and post-trial specialist knowledge and support
- psychological/counselling assistance, which may include psychological first aid, risk assessment, crisis information, and trauma counselling
- referral and practical assistance
- specialist information, support and case management of secondary victims of homicide.

The VSS employs six staff.

In 2017–2018, the VSS was referred, and sent information about the service to, 6,677 victims of crime, and provided support services to 3,776 clients. In 2018–2019, the VSS sent information to 7,310 victims of crime, and provided support services to 4,266 clients.

Source: Submission 32, Department of Justice.

#### ***Lack of availability of the Victim Support Service***

The Women's Council for Family and Domestic Violence Services (Women's Council) reported that the VSS has been dramatically reduced in recent years,<sup>256</sup> and is currently underfunded and understaffed.<sup>257</sup> It is rare for a VSS worker to support a victim if a criminal matter proceeds to trial, which can contribute to victims being reluctant to participate.<sup>258</sup> This lack of support may be due to the volume of matters in the MCWA and the speed at which they are finalised.<sup>259</sup>

The Women's Council suggested that support staff were previously available in metropolitan Magistrates courts to support women applying for an FVRO, and provide help with preparing affidavits. However, that service has been removed from most of these courts and is now only available at the Perth Magistrates Court.<sup>260</sup> The Committee received contrasting

<sup>255</sup> Submission 32A, Department of Justice, p. 5.

<sup>256</sup> Submission 12, Women's Council for Domestic and Family Violence Services, p. 3.

<sup>257</sup> Ms Kedy Kristal, Women's Council for Domestic and Family Violence Services, *Transcript of Evidence*, 27 November 2019, p. 4.

<sup>258</sup> Submission 10, Chief Magistrate of Western Australia, p. 5.

<sup>259</sup> *ibid.*

<sup>260</sup> Submission 12, Women's Council for Domestic and Family Violence Services, p. 3.

evidence from the Department of Justice, which stated that that VSS has always been based centrally, but will attend the suburban courts if requested by a client.<sup>261</sup>

The VSS provides much needed support,<sup>262</sup> however the Committee is concerned by reports of lengthy waiting times for victims to access the service. It seems that six paid staff, and an unknown number of volunteers, is insufficient to properly support over 4,000 clients a year. It needs to be sufficiently funded to provide a full service to its clients.

#### **Finding 23**

The Victim Support Service is insufficiently resourced to provide support to victims of family and domestic violence across all metropolitan Magistrates Court of Western Australia locations.

#### **Recommendation 16**

That the Attorney General ensures that funding is increased for the Victim Support Service to improve the level of support to victims of family and domestic violence in the Magistrates Court of Western Australia, particularly to victims in criminal matters that proceed to trial.

#### **Box 6.3: Victim Support and Child Witness Service**

The Victim Support and Child Witness Service (VSCWS) provides support services to victims of crime, including FDV victims, and child witnesses in regional areas. The VSCWS operates in 14 regional locations.

FDV victims can access the following services from the VSCWS:

- Family Violence Restraining Orders (FVROs)
  - Support to make an FVRO application is only available to victims of family violence who have an open VSCWS case. An open case refers to a criminal matter progressing through the court.
  - If there is not an open VSCWS case, family violence victims can receive FVRO application support from court registry staff.
- Family violence criminal matters
  - A victim of family violence is a victim of crime, and eligible to receive support services from the VSCWS.
  - Bail risk assessment reports are not available in regional areas.

Previously, the VSCWS was provided by a combination of departmental staff and contracted service providers. Since March 2020, all services have been provided solely by Department of Justice staff. The service currently has 18 FTE staff.

In 2017–2018, the VSCWS was referred, and sent information about the service to, 5,783 victims of crime, and provided support services to 4,108 clients. In 2018–2019, the VSCWS was referred, and sent information about the service to, 5,354 victims of crime, and provided support services to 4,201 clients. These numbers exclude services provided to child witnesses.

Sources: Submissions 32, 32A, 32B Department of Justice.

261 Submission 32A, Department of Justice, p. 5.

262 Submission 24, Centrecare Inc., p. 3.

**Lack of availability in the regions**

The geography of Western Australia will always create service delivery challenges given our large but sparsely populated state.<sup>263</sup> However, The Magistrates' Society of Western Australia (Magistrates' Society) suggests that support service delivery is well below what is should be:

...it is inconceivable that in 2019, in a Regional Area as vast and culturally and linguistically diverse as the Pilbara, there is one full-time Victim Support Services Officer in South Hedland and another Officer based in Karratha.<sup>264</sup>

At police stations that take on the role of court registries there is often limited or no support services available.<sup>265</sup> Further, FDV survivors, particularly Aboriginal people who live in remote communities, may still be required to travel for several hours to access the limited supports that are available at the police station.<sup>266</sup>

The Committee considers that access to the MCWA would be improved if there were more support services available. Careful consideration must be given to where those services could be located to provide the support to people who need it the most.

**Finding 24**

Support services for victims of family and domestic violence are severely limited in regional and remote areas, particularly for Aboriginal people. The geographical challenges lead to a disparity in the level of services available in some parts of regional Western Australia.

**Recommendation 17**

That the Attorney General ensures funding for expanded support service delivery for victims of family and domestic violence in regional areas, including specialist support services for Aboriginal people, that may include innovative service delivery models to recognise the unique geography of Western Australia.

**Reliance on volunteers for formal services**

As the number of FDV matters before the court grows, so does demand for support services.<sup>267</sup> Funding for these services has not kept pace. To help meet the demand, the FVS, VSS and VSCWS engage volunteers to assist in the provision of services. According to the Department of Justice, this 'enables improved and effective service delivery'.<sup>268</sup>

Although volunteers may provide valuable assistance, these services are of vital importance and should be funded sufficiently so that the gap in service delivery is provided by fully

263 Ms Teresa Tagliaferri, Department of Justice, *Transcript of Evidence*, 13 November 2019, p. 2.

264 Submission 23, The Magistrates' Society of Western Australia, p. 6.

265 Submission 16, Aboriginal Family Law Services, p. 4.

266 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 175.

267 Ms Ekaterini Blitz-Cokis, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 1.

268 Submission 32, Department of Justice, p. 11.

trained and engaged staff. The Committee agrees with the Magistrates' Society's assertion that '[t]he time has passed where significant reliance upon volunteers to fill the service gap is acceptable.'<sup>269</sup>

#### **Finding 25**

While there is scope for volunteer services in a comprehensive court support service framework, these should not be a substitute for or bridge a gap in funded services delivered by fully trained professional staff.

#### **Recommendation 18**

That the Attorney General ensures that court support services are sufficiently funded so as to not rely on volunteers to supplement services that should be provided by fully trained and engaged staff.

### **A comprehensive court support service should be available**

The Committee considers there are significant gaps in the availability of services provided to support people through FDV-related court processes. As set out above, the Department of Justice funded support services provide limited services to FVRO applicants. The services operate upon request, and often the support starts after a court process has begun. The services are often not available to support applicants throughout the entire criminal or civil process.

The Committee is not aware of any face-to-face service that applicants can access on the day they show up in court. While registry staff can provide some assistance with applications, their assistance is constrained by their role and time. The Committee also understands that the Perth Magistrates Court has introduced a concierge service to help direct court users to where they need to go,<sup>270</sup> however this is not intended as a substantial support service.

Further, support services for FVRO respondents are largely non-existent. The potential benefits of these services are similar to the benefits in providing legal representation for respondents (see Chapter 5) and providing support to respondents upon service of an interim FVRO (see Chapter 8). Importantly, supporting an FVRO respondent can reduce the risk of harm to the applicant and their family.

The Committee received a number of closed submissions from FVRO respondents and people supporting FVRO respondents, which noted the lack of information provided to respondents about their options and where they could seek help to guide them through the court process.<sup>271</sup> Some suggested the system was unfairly biased against them, and were of

*Women often report that they feel like they are “bombarded” with information about everything when they can barely focus on anything. Women often speak of needing someone to walk with them or walk them through the process.*

— Centrecare Inc.

<sup>269</sup> Submission 23, The Magistrates' Society of Western Australia, p. 6.

<sup>270</sup> Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Briefing*, 7 August 2019.

<sup>271</sup> Closed submissions.



the view that the outcomes of court proceedings were worse for all parties than if some support had been made available.<sup>272</sup>

In its 2015 report, the Special Taskforce on Domestic and Family Violence for Queensland recommended that court support workers were available for all applicants and respondents in FDV matters.<sup>273</sup> The Taskforce considered that '[h]aving adequate court support workers available to assist parties to understand the process is essential to ensure the best possible outcome for all parties.'<sup>274</sup>

Queensland's Specialist Domestic and Family Violence Courts provide support workers for both a Domestic Violence Protection Order applicant and female respondent, and will provide a liaison worker for a male respondent.<sup>275</sup> The support worker is able to provide support throughout the whole court process, while the liaison worker provides a more limited information and referral service.<sup>276</sup> An evaluation found that the court process ran more smoothly due to the information provided by the support workers. FDV survivors identified the help received by the support worker as one of the most positive aspects of the court experience.<sup>277</sup>

The Magistrates' Court of Victoria's specialist Family Violence Court Division also provides separate dedicated support workers throughout the whole process for both parties to a Family Violence Intervention Order application.<sup>278</sup> Domestic Violence Victoria, the state's peak body for domestic violence services, said that these are 'critical roles', alongside that of the duty lawyer. The support workers are valuable conduits between the party, legal support services, and non-court support services.<sup>279</sup>

The Committee agrees that support should be provided to both applicants and respondents in FVRO matters. A face-to-face service can provide support and information that existing services do not provide, and pamphlets or handouts cannot achieve.

While the Committee prefers the Victorian model where the respondent support worker provides a full suite of support services, the Queensland liaison worker model for male respondents still offers more support than is currently available at the MCWA. As discussed above, it is important that the applicant and respondent support workers are fully trained and engaged staff.

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272 Closed submissions.

273 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Queensland Government, 28 February 2015, Recommendation 124, p. 311.

274 *ibid.*, p. 310.

275 Queensland Courts, *Specialist Domestic and Family Violence Court*, 15 May 2019, accessed 15 May 2020, <<https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>>.

276 Domestic Violence Prevention Centre Gold Coast Inc., *Briefing*, 28 February 2020.

277 Department of Justice and Attorney-General, *Interim evaluation of the trial specialist domestic and family violence court in Southport*, Queensland, May 2016, p. 31.

278 Magistrates' Court of Victoria, *Family Violence Court Division*, 13 February 2020, accessed 15 May 2020, <<https://mfv.vic.gov.au/about/family-violence-courts-and-counselling-orders>>.

279 Domestic Violence Victoria, *Briefing*, 25 February 2020.

**Finding 26**

There are significant benefits for the court and parties to Family Violence Restraining Order applications in providing specialist support services through separate applicant and respondent support workers.

**Recommendation 19**

That the Attorney General ensures funding for specialist, in-court support services for all parties to Family Violence Restraining Order applications, including separate dedicated support workers for both applicants and respondents.

***An information service can provide valuable assistance***

Although the Committee considers that the primary, comprehensive applicant and respondent support services should be staffed by trained and engaged employees, volunteers may still provide a valuable information and assistance service.

In Magistrates courts across Victoria and Queensland, Court Network volunteers, known as ‘networkers’, provide proactive outreach by approaching court users to offer their service (see Box 6.4). Networkers can engage with people in court waiting areas who appear anxious, providing them with immediate support, if they are willing to accept it. A networker can sit down with someone and have a conversation, answer questions and provide clarity on information provided by the court and other services.

Networkers can also provide information to people about services that are available, which would somewhat address concerns about court users are not aware that services exist.<sup>280</sup> This service can also refer court users to other, non-court services that may assist with related needs (see below). A face-to-face service such as this is beneficial for court users with limited computer access or literacy who may find it difficult to access and navigate online resources.<sup>281</sup>

The Court Welfare Service is a volunteer service that operates in the MCWA.<sup>282</sup> The Department of Justice states it ‘provides advice, support and referrals to people who are involved in the Western Australian court system.’<sup>283</sup> Practically this service is limited to providing administrative support to duty lawyers, which is insufficient for the needs of court users.

The Committee considers that a service similar to that provided by Court Network would be valuable in Magistrates courts across the state. This could be a new, dedicated service or could be achieved by extending the range of services provided by the Court Welfare Service.

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280 Ms Teresa Tagliaferri, Department of Justice, *Transcript of Evidence*, 13 November 2019, p. 4.

281 Submission 20, Relationships Australia WA Inc., p. 2.

282 Submission 32B, Department of Justice, p. 2.

283 Department of the Attorney General, *Handbook and Services Guide 2017*, Western Australia, 2017, p. 21.

**Finding 27**

A proactive, in-court information and referral service could provide valuable support to both applicants and respondents in Family Violence Restraining Order matters.

**Box 6.4: Court Network**

Founded in 1980, Court Network is a not-for-profit, front-line community organisation that supports people accessing the court system. Its role is to empower and increase the confidence of court users in managing the requirements of the courts. It operates in 28 courts across Victoria and 10 courts across Queensland.

**Support services**

Court Network provides non-legal support and information about going to court, including attending court on the day to show users around, and explaining how courts and legal systems operate. Volunteers may explain the process that is about to happen, as well as help explain a process that the court user has just experienced.

Court Network can provide court users with appropriate referrals to other services, such as family violence services, victim support, housing, mental health and community legal centres. It also receives referrals from other services. It provides services to both applicants and respondents, victims and alleged perpetrators. At least two staff operate in a court at a time so assistance can be provided to both applicants and respondents in the same matter.

**People assisted**

In 2018–2019, Court Network assisted over 125,000 people across Victoria, the vast majority of which were supported in Magistrates' Courts (91,980). Court Network assisted 35,798 defendants, 32,380 family and friends, and 26,463 applicants. Court Network assisted 44,710 people for family violence related matters.

**Funding**

In Victoria, Court Network receives funding primarily from Court Services Victoria. It receives funding from the Department of Health and Human Services for four courts.

**Volunteers**

The majority of Court Network's staff are volunteers. Over 350 volunteers operate in Victoria, and approximately 150 volunteers operate in Queensland.

Court Network volunteers undertake a thorough recruitment, and learning and development program. Volunteers who will be providing support in specialist family and domestic violence courts will be provided with 3.5 days of additional training.

Source: Court Network, *Briefing*, 25 February 2020.

## **Culturally appropriate support services are needed to support Aboriginal people accessing the court system**

Although Aboriginal people are significantly overrepresented as FDV victims, the Ombudsman's 2015 investigation showed that Aboriginal women are less likely to apply for an FVRO than non-Aboriginal women.<sup>284</sup> During the investigation period, Aboriginal women comprised approximately one third of all FDV offences recorded by Western Australia Police Force (Police), and half of the fatalities the investigation reviewed were Aboriginal. However,

<sup>284</sup> Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 23.

Aboriginal women applied for only 11% of FDV-related Violence Restraining Orders during the investigation period.<sup>285</sup>

There are many and complex reasons why Aboriginal people may experience unique challenges that limit their access to the court system. Aboriginal people's historical experience with mainstream courts has not been positive.<sup>286</sup> For example, many Aboriginal people experience ongoing trauma as a result of policies of child removal. Today, a disproportionate number of children in care are Aboriginal. Accordingly, there is a reluctance amongst Aboriginal people to bring matters to court due to distrust of government agencies<sup>287</sup> and fear of further negative experiences, including their children being removed from their care.<sup>288</sup>

In many regional areas police stations function as court registries.<sup>289</sup> Aboriginal people may not want to access these registries due to 'negative past experiences, lack of trust in Police, and cultural reasons such as kinship obligations.'<sup>290</sup> Survivors of FDV may also not attend a police station to seek an FVRO, as they do not want any criminal charges laid against the perpetrator.<sup>291</sup>

***'Many Aboriginal people are apprehensive and reluctant to seek assistance from mainstream agencies, partly because of the discrimination, racism and lack of understanding some Indigenous people experience when doing so. The effects of trauma associated with dispossession, child removal and other practices also inform Aboriginal peoples' distrust of agencies such as police and Child Protection.'***

*– Royal Commission into  
Family Violence (Victoria)*

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### **Aboriginal people need to be involved in tailoring justice support services**

It is important to have specific support services in place to help Aboriginal people overcome accessibility challenges and access the court system. In its *Not Now, Not Ever* report, the Special Taskforce on Domestic and Family Violence in Queensland wrote:

The effectiveness of services offered to Aboriginal and Torres Strait Islander people is often undermined by a failure to deliver services in a culturally appropriate manner. Cultural appropriateness of services can be achieved by means such as cultural competence training for staff of service providers, and the application of principles on cultural appropriateness during service design.<sup>292</sup>

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285 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 23.

286 Submission 16, Aboriginal Family Law Services, p. 6.

287 Royal Commission into Family Violence, *Summary and recommendations*, Victorian Government, March 2016, p. 33.

288 Submission 16, Aboriginal Family Law Services, p. 6.

289 Submission 10, Chief Magistrate of Western Australia, p. 2.

290 Submission 16, Aboriginal Family Law Services, p. 5.

291 Submission 10, Chief Magistrate of Western Australia, p. 2.

292 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now Not Ever: Putting an End to Domestic and Family Violence in Queensland*, Queensland Government, 28 February 2015, p. 123.

To achieve this, Aboriginal people and communities should ‘be involved in co-designing the laws, policies and services that affect their lives.’<sup>293</sup> Aboriginal people should be consulted whenever the MCWA or Department of Justice are embarking on a new courts project, whether in metropolitan or regional areas. The Victorian Royal Commission into Family Violence (Royal Commission) said:

One theme that came through strongly in the Commission’s consultations was the importance of involving Aboriginal community controlled organisations and tailoring justice system responses that recognise the history and culture of Aboriginal peoples.<sup>294</sup>

The Committee was impressed by how the Magistrates’ Court of Victoria is acting upon the Royal Commission’s findings. The Committee met with representatives of the Koori Family Violence Project, who spoke about how the complexities of Aboriginal people’s experience with family violence and with authorities highlighted the importance of having access to culturally safe spaces.<sup>295</sup> The representatives spoke about Umalek Balit, which is a ‘court-based Koori Family Violence and Victim Support Program’ that provides support to Aboriginal families who attend at five Magistrates’ Court of Victoria locations for FDV-related court proceedings.<sup>296</sup> At each court, two Umalek Balit practitioners provide support services for Aboriginal people, anyone who cares for an Aboriginal child, and partners of Aboriginal people. Rather than being applicant and respondent specific, these practitioners are gender specific to reflect cultural safety around men’s and women’s business. Participants from the LGBTIQ+ community can choose to seek help from either practitioner.<sup>297</sup>

#### **Finding 28**

It is vitally important that Aboriginal people are involved at a high level in designing and delivering court programs and support services that are culturally and linguistically appropriate for Aboriginal people affected by family and domestic violence.

#### **Aboriginal specific court support services in Western Australia**

Due to the COVID-19 pandemic, the Committee was unfortunately unable to meet with representatives of the Barndimalgu Aboriginal Family Violence Court in Geraldton (see Chapter 10) to discuss the supports that assist it in making the court a culturally safe environment for Aboriginal offenders. However, the Committee generally received favourable evidence about the ‘wonderful stories’ coming from the court.<sup>298</sup>

293 Submission 30, Community Legal Western Australia, p. 11.

294 Royal Commission into Family Violence, *Summary and Recommendations*, Victorian Government, March 2016, p. 33.

295 Magistrates’ Court of Victoria, *Briefing*, 26 February 2020.

296 Victorian Government, *Recommendation 149: Resume the Koori Family Violence and Victims Support Program*, n.d., accessed 12 May 2020, <[https://w.www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation\\_id=108](https://w.www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation_id=108)>.

297 Magistrates’ Court of Victoria, *Briefing*, 26 February 2020.

298 Chief Magistrates Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 12.

Further, the Department of Justice employs ten Aboriginal liaison officers who provide information and advice on court procedures and outcomes to Aboriginal people, and also assist judicial officers and staff in relation to cultural matters<sup>299</sup> in nine Magistrates courts across the state, and in the Perth Children's Court.<sup>300</sup>

Aboriginal Family Law Services suggest that expanding the Aboriginal Liaison Program will enhance Aboriginal people's access to the MCWA.<sup>301</sup> A recent Department of Justice review of the program identified benefits in establishing two additional positions to service Bunbury and other courts in the Perth metropolitan area. No additional funding is being sought for these positions; the Department is investigating how these might be funded internally.<sup>302</sup>

When asking about the involvement of Aboriginal people in designing support service delivery at different court registries, the Committee was disappointed to learn that '[a]ddressing the needs of Aboriginal people is a consideration, however specific consultation has not occurred in recent years.'<sup>303</sup> The Committee considers that the delivery of court based services should be informed by ongoing discussion with stakeholders and local communities. It would therefore expect that the Department of Justice has in place some mechanism for feedback to be provided and incorporated into its service delivery.

#### **Finding 29**

Improving access to justice for Aboriginal people, particularly for those affected by family and domestic violence, requires a greater level of specialist, culturally and linguistically appropriate support service delivery for Aboriginal people, particularly in regional and remote locations.

#### **Recommendation 20**

That the Attorney General ensures funding for comprehensive specialist, culturally and linguistically appropriate court support services for Aboriginal people affected by family and domestic violence, particularly in regional and remote locations. Local Aboriginal communities must be significantly involved in the design and delivery of these services.

### **Culturally and linguistically diverse communities may experience additional challenges accessing support services**

The Western Australian community is increasingly multicultural. Based on census data, there was a 16.5% increase in the number of people in Western Australia born overseas between 2011 and 2016.<sup>304</sup> Of those born overseas, more people were born in non-main English speaking countries than those from main English speaking countries for the first time on record. There was also an increase in the number and proportion of people speaking a

299 Submission 32A, Department of Justice, p. 9; Supreme Court of Western Australia, *Equal Justice Bench Book: Aboriginal People – Court Liaison Officers*, 7 November 2017, accessed 11 May 2020, <[https://www.supremecourt.wa.gov.au/equaljustice/C/court\\_liaison\\_officers.aspx](https://www.supremecourt.wa.gov.au/equaljustice/C/court_liaison_officers.aspx)>.

300 Submission 32A, Department of Justice, p. 9.

301 Submission 16, Aboriginal Family Law Services, p. 9.

302 Submission 32B, Department of Justice, p. 3.

303 Submission 32A, Department of Justice, p. 9.

304 Office of Multicultural Interests, *Cultural and Linguistic Diversity in Western Australia (WA) 2016 Census*, Western Australia, n.d., p. 1.

language other than English at home, although the majority of these (86%) were proficient in English.<sup>305</sup>

As the community grows in its cultural diversity, it is increasingly important that culturally appropriate services are provided for people from different backgrounds, and that services are provided to people in a language that they can understand.<sup>306</sup> This is particularly important for those engaging with the MCWA, as limited culturally appropriate and language support services may limit a person's access to justice.

### **The Magistrates Court of Western Australia's website contains no information in languages other than English**

The MCWA's website does not provide information in languages other than English. It does note, in English, that translating and interpreting services are available, and more information can be sought by contacting the court location.<sup>307</sup> While the website contains very limited information about FVROs, nothing is written in a language other than English. This is despite there being increasing numbers of FVRO applications from people with culturally diverse backgrounds.<sup>308</sup>

The Department of Justice is currently undertaking work to translate the MCWA website into 'the top five languages'. It anticipates that this project will be completed by the end of 2020.<sup>309</sup> Further, the FVRO webpage does provide a link to Legal Aid Western Australia's (LAWA) website, which contains information sheets (not specifically about FVROs) in approximately 30 languages other than English, informing those who want to access the service about the services LAWA offers, and that interpreters can be arranged for appointments.<sup>310</sup>

The Committee was impressed by the Queensland Court website, which incorporates a software called BrowseAloud. This software will not only magnify or read aloud English text for English speakers with dyslexia, vision impairments or low literacy, but also translates webpages for people with English as another language. The translation service will translate the webpage a person is visiting into a language of the person's choice. For approximately 30 languages, the service will also read the text aloud in the chosen language.<sup>311</sup>

While the Committee is supportive of the Department of Justice's efforts to provide information in languages other than English, it considers the Department should continue its

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305 Office of Multicultural Interests, *Cultural and Linguistic Diversity in Western Australia (WA) 2016 Census*, Western Australia, n.d., p. 1.

306 Submission 10, Chief Magistrate of Western Australia, p. 4.

307 Magistrates Court of Western Australia, *Accessing our Services*, 10 July 2019, accessed 22 June 2020, <[https://www.magistratescourt.wa.gov.au/A/accessing\\_our\\_services.aspx](https://www.magistratescourt.wa.gov.au/A/accessing_our_services.aspx)>.

308 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Briefing*, 7 August 2019.

309 Submission 32B, Department of Justice, p. 4.

310 Legal Aid Western Australia, *Get Help in Your Language*, 3 May 2018, accessed 20 April 2020, <<https://www.legalaid.wa.gov.au/get-legal-help/get-help-your-language/english-version>>.

311 Queensland Courts, *Queensland Courts*, n.d., accessed 28 April 2020, <<https://www.courts.qld.gov.au/>>.



translation efforts to encompass more languages, and consider utilising software similar to the Queensland Courts.

**Finding 30**

The Magistrates Court of Western Australia’s website currently contains no information in languages other than English.

**Recommendation 21**

That the Attorney General ensures that the Department of Justice continues to expand the availability of information in other languages on all of its publicly accessible websites, and investigates the benefits of using website translation software.

**Language can be a barrier to understanding and engaging in court processes**

Understanding court processes and outcomes can be difficult for anyone, but may be particularly challenging for those who aren’t proficient in the English language. The Northern Suburbs Community Legal Centre Inc. (NSCLC) commented that for people with English language difficulties, ‘getting them to understand the law is exceptionally difficult because of the technical language and all of these procedures...’.<sup>312</sup> This can disadvantage both applicants and respondents in civil matters, and witnesses and defendants in criminal matters.

The MCWA provides interpreters, engaged in accordance with a Common Use Agreement, for court users who require one.<sup>313</sup> However, the Committee received concerning evidence that some interpreters engaged by the MCWA are unsuitable, and that neither magistrates nor court staff confirm interpreter competence.<sup>314</sup> This evidence provided several examples that highlighted the significant negative consequences of having an ‘incompetent’ translator or interpreter. For example, a court user may agree to matters that have been incorrectly explained to them.

The Chief Magistrate noted that magistrates do not have a ‘specific responsibility or ability to confirm the competence of interpreters that appear.’ However, in his experience, although ‘[t]here is a wide range of competence and professionalism in the contracted interpreters... my observation and experience is that the vast majority are professional and competent and take their responsibilities very seriously.’<sup>315</sup>

By virtue of not being sufficiently proficient in English that leads to a court user requiring an interpreter in the first place, the court user may lack the ability to comprehend the quality of the service provided or to complain to the court about the poor quality of the translation or interpreting service.<sup>316</sup> The Department of Justice confirmed that there is not a specific

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312 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 6.

313 Submission 32B, Department of Justice, p. 4.

314 Submission 46, Japan Australia Word Services Pty Ltd, p. 1.

315 Submission 10A, Chief Magistrate of Western Australia, p. 2.

316 Submission 46, Japan Australia Word Services Pty Ltd, p. 5.



complaints mechanisms for court users dissatisfied with interpreting services, however there are various general complaints mechanisms available.<sup>317</sup>

Another submission noted that magistrates presiding over FVRO proceedings are not trained to work with interpreters, potentially diminishing their effectiveness.<sup>318</sup> The Chief Magistrate noted that magistrates receive training on working with interpreters. Further, the Judicial Council on Cultural Diversity has drafted Recommended National Standards for Working with Interpreters in Courts and Tribunals. These standards have not been formally adopted by Western Australia's Cultural Diversity Committee, although all magistrates in the jurisdiction have been provided with a copy.<sup>319</sup>

The Committee considers that the provision of appropriate interpreting and translation services is vital for court users who are not proficient in the English language, or who are hearing or speaking impaired, to fully engage with and understand court processes and outcomes. It is of paramount importance that only interpreters who meet the necessary standards are engaged. Further, there must be an identified mechanism of complaint for court users who have concerns about the competence of interpreters.

#### **Finding 31**

Understanding court process and outcomes can be challenging for court users who are not proficient in English.

### **Increasing diversity in informational materials and support services**

The Chief Magistrate noted the need to educate members of Western Australia's multicultural community of the support services available.<sup>320</sup> The NSCLC recognises the importance of diverse representation in informational materials produced for court users, and produced a video with African actors to help members of the African community understand how the law operates.<sup>321</sup> The MCWA should work with LAWA and community legal centres to develop further informational materials for culturally diverse populations.

#### **Finding 32**

The cultural diversity of Western Australians should be reflected in the production of materials used to educate and inform court users about the role and process of the Magistrates Court of Western Australia.

#### **Recommendation 22**

That the Attorney General and the Minister for Citizenship and Multicultural Interests ensure funding for production of a wide range of culturally diverse information materials for court users, with a particular focus on matters involving family and domestic violence. In particular, the use of low-cost visual resources should be further explored.

317 Submission 32B, Department of Justice, p. 5.

318 Submission 12, Women's Council for Family and Domestic Violence Services, p. 6.

319 Submission 10A, Chief Magistrate of Western Australia, p. 2.

320 Submission 10, Chief Magistrate of Western Australia, p. 4.

321 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 6.

The Children's Court of Victoria is currently piloting a 'cultural support guides' program, whereby 'Australians of Sudanese and South Sudanese heritage have been trained and placed in the roles to help young people of similar backgrounds facing court cases, along with their families.'<sup>322</sup> Ms Maya Avdibegovic, Executive Director of Court Network, believes the cultural guides are able to break down barriers because they look like the court users, many of whom are quite disadvantaged and have experienced significant racism and discrimination.<sup>323</sup> Cultural guides are able to share their knowledge and experience, helping other networkers improve their cultural knowledge.<sup>324</sup>

The Committee is interested in the idea of 'cultural support guides', and considers they could provide valuable support if implemented in the right way and right place. The Committee is keen to learn the outcomes of the pilot program with a view to introducing a similar program in the MCWA.

**Finding 33**

The Children's Court of Victoria is currently piloting a 'cultural support guides' program to assist court users with a Sudanese or South Sudanese background.

**Recommendation 23**

That the Attorney General seek feedback from the Children's Court of Victoria about the success of the cultural guides pilot program with a view to implementing a similar program in Western Australian courts.

## **Support services at the Children's Court of Western Australia**

The Children's Court of Western Australia (CCWA) deals with FVRO applications involving children as the applicant, or respondent, or both. As with adults, children will find the court process daunting and confusing, perhaps even more so.<sup>325</sup> The Committee received evidence that there is no support service equivalent to the VSS that operates at the CCWA.<sup>326</sup> However, the Child Witness Service is available to provide support to all children giving evidence in any court proceedings.<sup>327</sup>

## **The Court should be a touchpoint for connection to broader support services**

FDV is often experienced concurrently with other issues, such as financial hardship, homelessness, illicit substance use and addiction, and mental health issues.<sup>328</sup> In addition to requiring help navigating the court process, many FDV victims and perpetrators would

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322 Stephanie Corsetti, 'Cultural support guides are helping Sudanese-Australian families to navigate court', *SBS News* (web-based), 2 December 2019, accessed 11 May 2020, <<https://www.sbs.com.au/news/cultural-support-guides-are-helping-sudanese-australian-families-to-navigate-court>>.

323 *ibid.*

324 Court Network, *Briefing*, 25 February 2020.

325 Submission 15, Children's Court of Western Australia, p. 2.

326 Submission 29, Magistrate Andrée Horrigan, p. 3.

327 Submission 32B, Department of Justice, p. 3.

328 Submission 23, The Magistrates' Society of Western Australia, p. 4; Submission 24, Centrecare Inc., p. 1.

benefit from accessing holistic support services to assist them with underlying issues that may contribute to or result from FDV.

However many people who present at court, either as part of the civil process or criminal process, are unaware of or have not previously engaged with support services.<sup>329</sup> Attendance at court can be an opportunity to connect people with broader services.<sup>330</sup> By having co-located support services available at or near a court precinct, such as at the Neighbourhood Justice Centre (NJC) in Victoria (discussed below), court staff are able to refer people to other services for prompt help. Having multiple services located in one place means people are more likely to meet with relevant support services.

#### **Finding 34**

Courts should be a touchpoint for people affected by family and domestic violence to access a broad range of support services.

#### **Support service should be co-located in ‘hubs’ near courts**

Magistrates courts in Western Australia do not currently have broader support services co-located within the court precinct.<sup>331</sup> This has been a source of frustration for service providers.<sup>332</sup> By comparison, the CCWA building in Perth enjoys a range of co-located services which are valuable to the court and court users alike. These include representatives from the Department of Communities, Youth Justice, the Metropolitan Youth Bail Service, the Department of Education, and a clinical mental health team run by the Mental Health Commission, with other services such as disability support services and Centrelink popping in from time to time.<sup>333</sup>

The Magistrates’ Society suggested that FDV service hubs should be created, which co-locate multiple agencies and have multidisciplinary expertise, and capacity for outreach.<sup>334</sup> Effective coordination of, and referral between, different services is integral to the effective operation of a ‘hub’.

The Chief Magistrate supports the idea of a ‘hub’ of co-located services to provide support to FDV survivors for all of the issues arising from FDV. However, he would prefer that the hub was not court-based for practical reasons including capacity constraints; most Magistrates courts have limited room to accommodate all the necessary service providers.<sup>335</sup>

The former CCWA President, Judge Julie Wager, also noted the challenges of co-locating support services within the existing court infrastructure due to the lack of available

329 Royal Commission into Family Violence, *Summary and recommendations*, Victorian Government, March 2016, p. 24; Brisbane Domestic Violence Service, *Briefing*, 28 February 2020.

330 Brisbane Domestic Violence Service, *Briefing*, 28 February 2020.

331 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 5.

332 *ibid.*

333 Judge Julie Wager and Magistrate Andrée Horrigan, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, pp. 12–13; Submission 29, Magistrate Andrée Horrigan, p. 4.

334 Magistrate Deen Potter and Magistrate Jennifer Hawkins, The Magistrates’ Society of Western Australia, *Transcript of Evidence*, 20 November 2019, pp. 2, 4.

335 Submission 10, Chief Magistrate of Western Australia, p. 3.

accommodation. Judge Wager suggested that the various support service could be located together in a neighbouring building, with a 'golden footsteps' style path from one location to the other.

The Committee supports the concepts of co-locating FDV support services at or near court locations. In seeking to develop these hubs, the Department of Justice should work with and leverage off the Department of Communities' creation of FDV support services hubs in Mirrabooka and Kalgoorlie (see Box 6.5). The Department of Communities undertook extensive community consultation in designing the hubs, including collaborating with local Aboriginal groups to ensure the hubs are culturally inclusive.

#### **Finding 35**

Support services should be co-located at or near court precincts throughout Western Australia to make the most of the opportunity to engage people affected by family and domestic violence.

#### **Recommendation 24**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence direct the Department of Justice and the Department of Communities to collaborate on the design, location and service delivery model of family and domestic violence support service hubs at or near court precincts throughout Western Australia.

#### **Box 6.5: Family and Domestic Violence One-Stop Hubs**

The Department of Communities are currently working towards establishing two 'FDV One Stop Hubs' in Mirrabooka and Kalgoorlie. The hubs were first announced in January 2017 as part of the Western Australian Government's Stopping Family and Domestic Violence Policy. The government commissioned Curtin University to develop a hub service delivery model for trial in a metropolitan and regional location.<sup>336</sup>

In recent months, the Department of Communities has held stakeholder and community consultation to customise how each hub will operate. Representatives of the Department of Justice have attended a co-design workshop.

It is envisaged that services located at the hubs will provide support to address the following issues:

- legal and financial matters
- alcohol and other drugs
- mental health
- counselling
- disability
- cultural needs
- housing.

Source: Department of Communities, *One Stop Hubs*, n.d., accessed 3 August 2020, <<https://www.communities.wa.gov.au/projects/one-stop-hubs/>>.

336 Department of Communities, *Research for the Development of Two 'One Stop Hubs' Executive Summary*, report prepared by Donna Chung, et al., Curtin University, Western Australia, 2018, p. 4.

## Community Justice Centres

A community justice centre (CJC) is the pinnacle of holistic service delivery and support service co-location. Community justice aims to reduce crime and improve the local community by approaching justice from the position that crime stems from individual and environmental factors.<sup>337</sup> A community justice model should focus on:

- ‘Place matters: justice should tailor to the needs of specific people and places
- Solve problems: address public safety issues proactively and reactively
- Decentralise authority, share accountability: police, courts, and corrections work best where direct action is needed most
- Involve people: citizens must participate in justice to get the best just outcome
- Improve community life: justice must improve the quality of life for the community overall.’<sup>338</sup>

Co-locating a court with key support services is an important element of a CJC’s structure:

Through the co-location of a court house with a tightly integrated support service team, this justice model turns the court intervention into an opportunity to problem-solve ways to address the downward spiral of offending and to partner with local residents, organisations, schools, local government and businesses to create a place of community connection and support.<sup>339</sup>

### ***The Neighbourhood Justice Centre is an example of what could be achieved***

The NJC servicing the City of Yarra in Melbourne is Australia’s only CJC, and one of 80 worldwide. It was established in 2007 to address high rates of crime and disadvantage in the local area.

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337 Neighbourhood Justice Centre, *Strategic Plan 2019–2023*, Magistrates’ Court of Victoria, August 2019, p. 8.

338 Neighbourhood Justice Centre, *How community justice works*, 22 April 2020, accessed 14 May 2020, <<https://www.neighbourhoodjustice.vic.gov.au/knowledge-centre/about-community-justice/how-community-justice-works>>.

339 Sarah Murray, Harry Bragg and Suzie May, *‘Doing justice differently’: A community justice centre for Western Australia—A feasibility study*, Centre for Indigenous People and Community Justice, UWA Law School, Western Australia, June 2018, p. 7.

#### Box 6.6: Neighbourhood Justice Centre

The Neighbourhood Justice Centre (NJC) is a multi-jurisdictional court that sits as a Magistrates Court, Children's Court, the Victims of Crime Assistance Tribunal and Victorian Civil and Administrative Tribunal. It can hear a wide range of matters that involve family violence.

The NJC houses 19 agencies onsite, offering a broad range of services. Agencies provide the following family violence specific support services:

- **Applicant support:** crisis accommodation referrals, assistance with Centrelink and other welfare benefits, financial counselling services, general counselling, mental health support, victims of crime assistance, legal information and representation, emotional support.
- **LGBTIQ+ applicant support:** referrals to services including housing, financial counselling and/or mental health/counselling support, referrals to peers support networks, information about the justice process, care and emotional support.
- **Respondent support:** referrals to services including housing, addiction services, and financial counselling, referrals to behaviour change programs, ongoing counselling and case management, referral to peer support networks, information about the justice process, emotional support on the day of the hearing.
- **LGBTIQ+ respondent support:** emotional support, practical assistance, and information.

In addition, the NJC has support services that operate in the following areas:

- alcohol and other drugs
- court network
- chaplain
- mental health
- victim of crime support
- financial counselling
- refugee and migrants
- fines assist clinic
- Aboriginal and Torres Strait Islander support
- jobs assist.

Source: Neighbourhood Justice Centre, *Home page*, 29 July 2020, accessed 3 August 2020, <<https://www.neighbourhoodjustice.vic.gov.au>>.

As Australia's only CJC, outcomes of the NJC are closely monitored. The NJC's website states that:

The results invariably show that our model increases confidence in, and access to, justice and that community partnerships resolve crime and safety issues earlier and more proactively than traditional justice practices that focus on the aftermath of crime alone.

In the five years after the NJC was established, the City of Yarra experienced a 31% decline in total crime, significantly greater than in comparable local government areas. Further, the

number of unsuccessful orders (orders cancelled due to breach) made was significantly lower than that at comparison sites, and recidivism rates were lower.<sup>340</sup>

It can be difficult to directly or solely attribute these positive changes to the establishment of the NJC for a number of reasons. There are often other factors which are likely to affect the outcomes, such as changes in the demographics of an area or changing policing policies and practices. Further, it can be difficult to find appropriate sites for comparison purposes, and difficult to draw conclusions from small sample sizes.<sup>341</sup>

***The feasibility of creating a community justice centre in Western Australia has been investigated***

In June 2018, researchers from the University of Western Australia Law School, in collaboration with Anglicare WA, Community Legal Western Australia and a stakeholders' advisory panel, investigated the feasibility of establishing a CJC model in Western Australia. The report notes that establishing CJs would:

...empower neighbourhoods to co-design bespoke and place-based justice solutions to address the unique needs of their community and to support individuals caught up in the criminal justice system. CJs have the potential to serve WA communities by improving social cohesion and connection, reducing social disadvantage, crime and recidivism and creating collaborative as well as culturally safer justice experiences.<sup>342</sup>

After examining local, national and international community justice initiatives, and consulting with stakeholders, it recommended that two CJs should be piloted, one in a metropolitan area and one in a rural or remote community.

The Department of Justice generally supported the findings of this feasibility study, and the concept of a CJC. The study, together with various other studies, was assessed by the cross-government Justice Planning and Reform Committee (JPRC), a committee established 'to take a holistic, collaborative approach to making our criminal justice system work more effectively and efficiently, with a particular focus on slowing the growth of the adult prisoner population.'<sup>343</sup> Ultimately the JPRC 'determined it should advance an alternative initiative in the first instance being a general court intervention program.' The program will pilot at the Perth Magistrates Court in October 2020. The Committee awaits the commencement of this program with interest.

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340 Stuart Ross, 'Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program', *Trends and issues in crime and criminal justice*, no. 499, November 2015, pp. 1–8.

341 *ibid.*

342 Sarah Murray, Harry Bragg and Suzie May, 'Doing justice differently': *A community justice centre for Western Australia—A feasibility study*, Centre for Indigenous People and Community Justice, UWA Law School, Western Australia, June 2018, p. 5.

343 Justice Planning and Reform Committee, *Working together for Western Australia to reform our criminal justice system*, Government of Western Australia, 2020, p. 3.

**Finding 36**

Community justice centres are an excellent example of the benefits to be realised for the court and court users in co-locating support services that are tailored to the needs of their local communities and are highly accessible.

**Recommendation 25**

That the Attorney General and the Minister for Community Services ensure that, when collaborating on future service delivery models, the Department of Justice and the Department of Communities consider the co-location model offered through community justice centres.



## Chapter 7

### Alternative dispute resolution methods may be useful for matters involving family violence

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#### The adversarial nature of court proceedings can be traumatic

Restraining order proceedings are primarily adversarial. FDV victims are often vulnerable, and engaging in adversarial proceedings where they have to talk about the violence they have endured, whilst being afraid that they will not be believed or that what they have suffered will be minimised or dismissed, is known to cause further trauma.<sup>344</sup>

Adversarial approaches are also reliant on the parties providing sufficient evidence to support their position. As most parties to Family Violence Restraining Order (FVRO) proceedings do not have legal representation or sufficient support to guide them through the process, parties are unlikely to know what information they can bring forth as evidence to best support their case.<sup>345</sup>

Incorporating methods of alternative dispute resolution (ADR) may make court processes less traumatic for FDV survivors, and has the potential to improve outcomes. ADR refers to any process aimed at resolving a dispute in a collaborative way, generally outside the courtroom.<sup>346</sup> For the purposes of this report, ADR refers to negotiation or mediation, or a hybrid of these two approaches.

ADR may not be appropriate in all circumstances.<sup>347</sup> An FDV survivor may be unable to negotiate or mediate with the person who inflicted harm upon them.<sup>348</sup> There is a risk that the FDV perpetrator will be able to inflict further harm through this process.

Another FDV victim may find an ADR process to be less traumatic than an adversarial one, and therefore be more amenable to working with the perpetrator, through a facilitator, to find a mutually agreeable resolution. Allowing victims to determine whether they want to attempt ADR empowers them to tailor the FVRO process to their circumstances, hopefully leading to a satisfactory outcome.

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344 Submission 20, Relationships Australia WA Inc., p. 3.

345 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 15.

346 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Volume 1*, ALRC Report 114 and NSWLRC Report 128, Australian Government, Sydney, October 2010, p. 983.

347 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 6.

348 Submission 16A, Aboriginal Family Law Services, p. 11.

## Alternative dispute resolution may be useful for court matters involving family and domestic violence

There is 'little systematic or evidence-based research that can tell us clearly what the benefits and risks are to mediating family violence matters.'<sup>349</sup> However, based on the University of Western Australia's Mediation Clinic's research and studies, the following benefits and risks were suggested.

Benefits include:

- Improving the safety of FDV survivors, particularly considering court proceedings are often a time of heightened risk.
- Improving outcome satisfaction for both parties.
- Provides parties with a sense of natural justice due to feeling heard and being involved in decision making.
- Increased flexibility of outcome resulting from involvement in decision making.
- Lower costs.
- More timely resolutions.
- Empowerment through self-determination of parties.
- Increased workability of orders.
- Improvements in knowledge and confidence among mediators and court staff in dealing with intervention order related disputes.
- Greater knowledge of issues involved when creating policies and procedures.
- Increased reputation and profile of the court.
- Valuable relationships developed with other participating courts.<sup>350</sup>

*'The idea and use of negotiation, alternative dispute resolution or mediation is cautionary in the family and domestic violence sector. Notwithstanding this, there is information and evidence that these processes may be appropriate in many instances, with safety and certain practices, such as risk assessments, built into the system.'*

– Northern Suburbs  
Community Legal Centre

Risks include:

- Mediators/facilitators cannot identify FDV occurring during the process and its effects.
- Re-traumatisation of victims.
- Imbalance of power between parties results in unfair, unproductive or unsafe outcomes.<sup>351</sup>

### Finding 37

Alternative dispute resolution methods may be useful in resolving court proceedings involving family and domestic violence.

349 Submission 34, Associate Professor Jill Howieson (UWA Mediation Clinic), p. 1.

350 *ibid.*, pp. 2–3.

351 *ibid.*, p. 3.

## Current use of alternative dispute resolution in family violence matters

Magistrates Court of Western Australia (MCWA) courts currently employ ADR methods to resolve matters before the court in an *ad hoc* way.<sup>352</sup> Magistrates Potter and Hawkins noted that it is difficult for magistrates to facilitate ADR due to the nature of their role as magistrates and the need to maintain institutional integrity.<sup>353</sup> However, some magistrates find ways to enable parties to attempt to reach a resolution via ADR processes. For example, after an interim FVRO is granted and objected to at the Joondalup Magistrates Court, a magistrate will often provide FVRO parties with the opportunity to resolve the issue using ADR prior to the holding the final hearing.<sup>354</sup>

A successful ADR process is often dependent on the involvement of legal service providers. The Northern Suburb Community Legal Centre Inc.'s (NSCLC) Restraining Order and Respondents program involves an element of negotiation to resolve contested FVRO matters prior to the final hearing. NSCLC reported that 57% of its cases settled on the first court date after objection by way of an undertaking, consent order or conduct agreement order<sup>355</sup> (discussed further below).

Legal Aid Western Australia (LAWA) offers a dispute resolution service for family law matters, but not specifically FVRO matters, although parties may be involved in both. Family and domestic violence history and risk are factors considered in determining eligibility to participate in the service, but are not determinative.<sup>356</sup> LAWA offers all parties the opportunity to receive legal advice prior to and during the conference. It will undertake safety planning to protect vulnerable parties. In 2018–2019, LAWA convened 834 mediations, and achieved a 92% settlement rate.<sup>357</sup>

Other ADR based programs have previously existed in Western Australia, yet were discontinued due to funding constraints. The Bunbury Community Legal Service used to offer a mediation service for Violence Restraining Order (VRO) matters. The Magistrates' Society of Western Australia submitted that this was a successful initiative for not only resolving restraining order matters, but other related issues as well, such as parenting arrangements and property settlements.<sup>358</sup>

## Family Court of Western Australia mediation pilot

The Family Court of Western Australia (FCWA) has recently undertaken a pilot mediation program to attempt to settle or narrow down issues in dispute between parties, including

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352 Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 4.

353 Magistrate Deen Potter and Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2, 4.

354 Magistrate Jennifer Hawkins, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 5.

355 Submission 19, Northern Suburbs Community Legal Centre Inc., pp. 7–8.

356 Legal Aid Western Australia, *Dispute Resolution at Legal Aid WA*, 2 May 2018, accessed 30 April 2020, <<https://www.legalaid.wa.gov.au/find-legal-answers/family/resolving-family-law-disputes/get-help/dispute-resolution-legal-aid-wa>>.

357 Submission 38A, Legal Aid Western Australia, p. 8.

358 Submission 23, The Magistrates' Society of Western Australia, pp. 8–9.

for matters involving FDV. All matters are pre-screened by registrars to determine if they are suitable for conferencing. Parties concerned about their personal safety are also provided with options, including attending the conference electronically.<sup>359</sup>

An interim evaluation of the first six months of the pilot found that of 135 mediations scheduled, 115 were completed. Of these, all issues were resolved at 64 mediations. This saved the court an estimated 166 sitting days.<sup>360</sup>

The evaluation also invited conference participants to provide feedback on the mediation process. The vast majority who provided feedback considered there was at least some benefit to the pre-trial conference (191 out of 205 responses), and a significant majority thought the pre-trial conference increased the chance of settlement (156 out of 205 responses).<sup>361</sup>

Based on the success of the pilot to date, the FCWA requested and received funding for the appointment of three permanent registrars.<sup>362</sup>

#### **Finding 38**

Alternative dispute resolution methods are already being used successfully to resolve matters involving family and domestic violence in some Western Australian courts.

#### **Box 7.1: Family Court of Western Australia's pre-trial conference**

Conferences are generally listed for one day and are conducted by registrars who take an active facilitation role.

The day will begin with the registrar holding separate 45 minute, pre-mediation interviews with both the applicant and respondent (and any other relevant party). During these interviews the registrar will discuss the conferencing process, possible approaches to reaching a settlement, and the issues in dispute.

During or after these interviews, the registrar may conclude that the matter is inappropriate for pre-trial conference, and cancel the conference.

After the pre-mediation interviews, the registrar will assist the parties to explore ways to settle the dispute without going to trial. The registrar may speak to parties separately during the mediation. Legally represented parties can also speak privately with their lawyer at any time.

At the end of the conference, the registrar will sum up, highlighting matters that have been agreed. If all matters are agreed, a Minute of Consent Orders will be prepared, and court proceedings will end. If final agreement is not reached, the registrar will make procedural orders about next steps.

Source: Submission 45, Family Court of Western Australia.

#### **Conduct agreement orders are increasingly being used**

One example of ADR already being employed in FVRO proceedings are conduct agreements. The *Restraining Orders Act 1997* (RO Act) provides that parties may enter a negotiated conduct agreement that imposes conditions on the respondent to which they must adhere.

359 Submission 45, Family Court of Western Australia, pp. 4–5.

360 Family Court of Western Australia, *Mediation Pilot – Interim Report: July–December 2019*, Western Australia, 13 January 2020, pp. 7–8.

361 *ibid.*, p. 11.

362 Submission 45, Family Court of Western Australia, p. 7.

A conduct agreement is taken to be an FVRO for the purposes of the RO Act, and is therefore legally enforceable, but it is not an admission by the respondent of the matters alleged in the FVRO application.<sup>363</sup>

Conduct agreements were created in 2016, with the aim of ‘encouraging more respondents to consent to the order in appropriate circumstances rather than contest the matter at a final order hearing.’<sup>364</sup> It provides an alternative avenue for FVRO matters to be resolved in a manner that is satisfactory to both parties.

The MCWA has seen recent growth in the use of conduct agreements. During 2017–2018, 187 conduct agreement orders were granted, in 2018–2019 this increased to 287.<sup>365</sup> Magistrates Potter and Hawkins attributed the popularity of these orders to the use of language; removing the term ‘violence’ from the name of the order made it more acceptable to respondents.<sup>366</sup>

The NSCLC suggests that these types of customised agreements can help support the safety of the FVRO applicant and children, whilst at the same time minimising costs and delays in this and related proceedings.<sup>367</sup> Of the 70 FVRO proceedings where NSCLC represented respondents in 2018–2019, 38.6% resulted in negotiated conduct agreements.<sup>368</sup>

However, the Women’s Council for Family and Domestic Violence Services (Women’s Council) is concerned that applicants may be pressured into entering conduct agreements as limited legal aid funding means they do not have access to legal representation to take the matter to a final hearing.<sup>369</sup> If the Committee’s recommendation to ensure all FVRO proceedings parties have access to legal representation is implemented, some of the Women Council’s concerns may be allayed.

## **Western Australia recently passed legislation introducing conferencing into the Family Violence Restraining Order process**

The Western Australian Parliament has recently passed legislation to introduce ‘shuttle conferencing or mediation’ as an option in the FVRO process.

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363 *Restraining Orders Act 1997*, (WA), s. 10H.

364 The Hon. Liza Harvey MLA, Minister for Police, Legislative Assembly, *Hansard*, 16 November 2016, p. 8189.

365 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, Email with Family Violence Restraining Orders Report, 12 September 2019, p. 10.

366 Magistrate Jennifer Hawkins, The Magistrates’ Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 5.

367 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 8.

368 Submission 19A, Northern Suburbs Community Legal Centre Inc., p. 3.

369 Submission 12, Women’s Council for Family and Domestic Violence Services, p. 5.

## Western Australia's Family Violence Restraining Order conference model is based on the ACT Magistrates Court's model

The Western Australian FVRO conferencing model recently introduced by the *Family Violence Legislation Reform Act 2020* (FV Reform Act) is partially based on the ACT Magistrates Court's model<sup>370</sup> (see Box 7.2).

### Box 7.2: ACT Magistrates Court's Family Violence Protection Order conferencing process

If an interim Family Violence Protection Order (FVPO) is granted, the matter will proceed to a mandatory conference scheduled about six weeks later. If the respondent endorses a non-objection to the order prior to the conference, the FVPO will be finalised and the conference will not proceed.

#### Conferencing process

Conferences are listed at half hourly intervals, although may take longer.

The conference is facilitated by a Deputy Registrar. Applicants and respondents are located in separate rooms in separate areas of the court. Each conference room has two doors on opposite sides of the room, and a duress button.

The conference is based on shuttle mediation with facilitative consultation. The conference facilitator will move between the rooms to meet with the parties separately to determine issues and the potential for resolution.

Most parties are self-represented and directly interact with the conference facilitator. However, legally represented parties will still directly interact with the facilitator.

#### Conferencing outcomes

There are a number of possible outcomes:

- Parties can discontinue the FVPO application.
- If the applicant does not attend, the matter may be dismissed.
- If the respondent does not attend, the matter will proceed into court for *ex parte* orders.
- If parties agree, they can make enforceable consent orders. Consent orders are made without proof or admission of guilt.
- Parties may agree to unenforceable undertakings.
- If parties do not agree, the matter is adjourned for hearing.

If the parties do not reach agreement during the conference, a hearing date will be set in approximately 12–16 weeks.

Source: ACT Magistrates Court, *Briefing*, 27 February 2020.

It is intended that conferencing will be piloted in metropolitan Magistrates courts for two years. The pilot will then be evaluated to determine if it should be continued, expanded or concluded.<sup>371</sup>

The Western Australian Government envisages that the conferencing process will have many of the positive outcomes experienced in the Australian Capital Territory (ACT), including:

- Reduction in re-traumatisation of FDV victims.<sup>372</sup>

370 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 6.

371 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

372 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 5.

- Improved understanding of orders, which will lead to a reduction in the degree and number of breaches.<sup>373</sup>
- Reduction in time to trial for contested hearings, and freeing up magistrate time for other matters.<sup>374</sup>

The Committee considers it important that the Western Australian Government seeks feedback during the trial period. If the conferencing process extends beyond the trial, a feedback mechanism should be incorporated into the process for ongoing improvements.<sup>375</sup>

#### **Finding 39**

The Western Australian Government is intending to introduce a Family Violence Restraining Order conferencing pilot in two metropolitan courts.

#### **Recommendation 26**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program incorporates a mechanism for stakeholders to provide contemporaneous feedback on the program, to allow for the process to be improved as the pilot progresses.

#### **Recommendation 27**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program be expanded to include a pilot in at least one regional city and one remote location.

#### **Recommendation 28**

That the Attorney General ensures that the Family Violence Restraining Order conferencing pilot program is subject to a robust, transparent and independent evaluation prior to the conclusion of the pilot to determine if the program should continue and be expanded to other court locations.

The evaluation should consider:

- cost effectiveness and efficiency
- consistency of outcomes
- feedback from applicants and respondents, court staff, lawyers and support service workers to determine how different court workers are affected by the program
- whether stakeholders considered conferencing a favourable addition to the Family Violence Restraining Order process
- whether the process reduced trauma for applicants, when compared to contested hearings, and whether they felt safe and supported throughout.

The completed evaluation should be made public and provided to stakeholders.

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373 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2, 5.

374 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 5.

375 Legal Aid ACT, *Briefing*, 27 February 2020.

***The ACT Magistrates Court's conferencing model is a useful step in the Family Violence Protection Order process***

Although the ACT Magistrates Court's shuttle conference process has not been formally evaluated, it reports some impressive outcomes. Statistics show that conferencing results in a 95% settlement rate. Further, only 20% of orders agreed at conference are breached, which is much lower than other jurisdictions.<sup>376</sup>

The majority of witnesses the Committee spoke to were in favour of the conferencing process to varying degrees, citing significant benefits for applicants, respondents and the court, including that:

- It empowers parties to determine the conditions of their order/undertaking rather than a decision being imposed by the court.<sup>377</sup>
- It reduces re-victimisation of the applicant.<sup>378</sup>
- Applicants can be protected without having to litigate. This is particularly relevant where they may not have a lot of evidence to support their application.<sup>379</sup>
- It can promote safety for the applicant and de-escalate a situation.<sup>380</sup>
- Parties can tailor the order/outcome to their particular circumstances.<sup>381</sup>
- It allows both parties to understand and agree to the conditions of the order and the ramifications of breaching, thus increasing the likelihood of compliance.<sup>382</sup>
- It allows for the consideration of orders in full knowledge of other court matters, including FCWA orders.<sup>383</sup>
- Discussions happen 'without admissions' and there are no findings of fact, so outcomes may not be used against a respondent in future FCWA proceedings.<sup>384</sup> However, this may be disadvantageous for the applicant.
- The model may be more appropriate for Aboriginal families where there is a strong preference for safety initiatives that recognise the need to include families within the decision making process.<sup>385</sup>
- It provides an opportunity for parties to be connected to other services.<sup>386</sup>
- It reduces costs for the court and parties.<sup>387</sup>

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376 Damien Carrick, 'Shuttle mediation for family violence cases in ACT', *ABC Law Report* (web-based), 27 February 2018, accessed 15 May 2020, <<https://www.abc.net.au/radionational/programs/lawreport/act-family-violence-orders/9486246>>.

377 Magistrates Court of the Australian Capital Territory, *Briefing*, 27 February 2020.

378 Submission 33, A/Commissioner for Victims of Crime, p. 3.

379 Legal Aid ACT, *Briefing*, 27 February 2020.

380 *ibid.*

381 *ibid.*

382 Submission 33, A/Commissioner for Victims of Crime, p. 3.

383 *ibid.*

384 Legal Aid ACT, *Briefing*, 27 February 2020.

385 Submission 33, A/Commissioner for Victims of Crime, p. 3.

386 Magistrates Court of the Australian Capital Territory, *Briefing*, 27 February 2020.

387 *ibid.*



- It is a productive way of dealing with FVPO applications.<sup>388</sup>
- Matters are more quickly resolved.<sup>389</sup>
- Court lists are freed-up.<sup>390</sup>

#### **Finding 40**

Participants in the ACT Magistrates Court's shuttle conferencing identified that this process has many benefits.

#### ***The ACT Magistrates Court's Family Violence Protection Order conferencing model still has limitations***

However, it is not a perfect process. Some of the limitations the Committee heard included:

- Applicants may agree to less protection than would have been ordered by the court.<sup>391</sup>
- Issues of power and control remain, even though parties are not in the same room.<sup>392</sup>
- Court staff still experience significant time pressures, and sometimes this can manifest in pressure to settle, or limited time being spent on an attempt to reach a negotiated outcome.<sup>393</sup>
- Registrars take on more of a passive facilitator role, rather than being an active mediator.<sup>394</sup>
- Many applicants do not have advice or support during the process.<sup>395</sup>
- There is less scope for negotiation if parties do not have legal representation.<sup>396</sup>
- Anecdotally, many (potentially up to 80%) of the matters do not settle at a first conference, rather they settle during a second conference held on the morning of the final hearing.<sup>397</sup>
- Depending on the circumstances of the matter, some Deputy Registrars may require additional skills/training in relation to FDV and the dynamics of power and control.<sup>398</sup>
- 'Without admission' may mean the respondent does not accept responsibility, which may affect his or her likelihood of adhering to the order.<sup>399</sup>

These challenges must be considered in the context of the alternative process i.e. a full hearing.<sup>400</sup> Some of the issues with the conferencing process—power imbalance, time constraints—are also issues with the hearing process. Neither conferencing nor continuing

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388 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

389 Magistrates Court of the Australian Capital Territory, *Briefing*, 27 February 2020.

390 Magistrates Court of the Australian Capital Territory, *Briefing*, 27 February 2020.

391 Legal Aid ACT, *Briefing*, 27 February 2020.

392 Domestic Violence Crisis Service, *Briefing*, 27 February 2020.

393 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020; Legal Aid ACT, *Briefing*, 27 February 2020.

394 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

395 Domestic Violence Crisis Service, *Briefing*, 27 February 2020.

396 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

397 Domestic Violence Crisis Service, *Briefing*, 27 February 2020.

398 *ibid.*

399 Legal Aid ACT, *Briefing*, 27 February 2020.

400 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

to a final hearing guarantees either party a successful outcome.<sup>401</sup> No process is perfect, nor will it work for all parties or matters.<sup>402</sup> Overall, the evidence indicated that ADR was generally suitable for use in FDV matters, and that incorporating an ADR component into the FVRO process is a better model than a solely adversarial approach.

#### **Finding 41**

Although the ACT Magistrates Court conferencing process still has some limitations, this alternative dispute resolution process is generally considered a better model than a solely adversarial approach.

### **Western Australia's conferencing model differs from the ACT Magistrates Court's model**

In the ACT, a matter is set down for conference once an interim order is made. By comparison, in Western Australia a respondent has 21 days to object after they have been served with an interim FVRO. The order is finalised if the respondent does not object to the order within the time frame. If the respondent does object to the interim FVRO, the conference will be set down for two to four weeks later.<sup>403</sup>

In the last three financial years, objections have been made to fewer than half of the interim FVROs granted (see table 7.1). This will mean significantly fewer matters may proceed to conference in Western Australia when compared with the ACT process.<sup>404</sup> While this makes Western Australia's process more efficient, it will likely result in Western Australia having a lower settlement rate than the ACT, as only matters in which the respondent objects proceed to conference.<sup>405</sup>

**Table 7.1: FVRO applications, interim FVROs granted and objections<sup>406</sup>**

Stage	2016–2017	2017–2018	2018–2019
Applications	8,650	10,586	11,975
Interim FVROs granted	5,088	7,064	8,267
Objections lodged	2,518	3,433	3,933

Note: FVROs were not introduced until 2017, therefore the 2016–2017 number reflects the number of VROs where the relationship between the applicant and respondent was classified as 'domestic'.

<sup>401</sup> Legal Aid ACT, *Briefing*, 27 February 2020.

<sup>402</sup> Domestic Violence Crisis Service, *Briefing*, 27 February 2020.

<sup>403</sup> Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

<sup>404</sup> Chief Magistrate Steven Heath, Magistrates Court of Western Australia, Email with Family Violence Restraining Orders Report, 12 September 2019, pp. 1–5.

<sup>405</sup> Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

<sup>406</sup> Chief Magistrate Steven Heath, Magistrates Court of Western Australia, Email with Family Violence Restraining Orders Report, 12 September 2019, pp. 1–5.

**Finding 42**

The Magistrates Court of Western Australia's Family Violence Restraining Order conferencing model will likely be more efficient than the ACT Magistrates Court's model due to the objection process limiting the number of matters that may proceed to conference. However, as all matters that go to conferencing in Western Australia will be contested, overall settlement rates arising from the conferencing will likely be lower.

Secondly, conferencing is mandatory in the ACT. Under the Western Australian model, conferencing will not proceed if either party objects.<sup>407</sup> This is to ensure 'autonomy for the parties, and in particular, the victim, in determining whether the particular dynamic of the parties' relationship is suitable for conferencing.'<sup>408</sup> It is uncertain how many parties may not agree to conferencing, however the NSCLC noted that, in their experience with negotiation in FVRO matters, '[m]ost applicants are prepared to be part of a process that assists respondents and provides an opportunity to resolve matters then and there.'<sup>409</sup>

**Finding 43**

The Magistrates Court of Western Australia's Family Violence Restraining Order conferencing will be optional, which requires both parties' agreement in order for the conference to take place.

***The conference registrar is key to mitigating risk***

As with the ACT model, FVRO conferencing will be facilitated by court registrars. The MCWA will employ four appropriately qualified registrars as conference facilitators. While the registrar qualification requirements have not been finalised, funding will be requested for training.<sup>410</sup> Registrars facilitating the pre-trial mediation in the FCWA must be legal practitioners with five or more years of legal experience, and detailed knowledge and understanding of the family law jurisdiction.<sup>411</sup>

Registrars will have a key role in mitigating the risk of power imbalance between the parties, a dynamic often present in matters involving FDV. Registrars facilitating the pre-trial mediation in the FCWA utilise a number of techniques to monitor and respond to any power imbalances, including:

- 'Facilitating regular breaks to enable the parties to speak to their lawyer (if represented) or support person (if self-represented)
- Facilitating private, one on one sessions with each party during the day
- Adjourning the conference for another day, if the registrar concludes that it is inappropriate to continue the conference

407 *Family Violence Legislation Reform Act 2020*, (WA), s. 72.

408 *Family Violence Legislation Reform Bill 2019, Explanatory Memorandum*, Legislative Assembly, p. 48.

409 Ms Ekaterini Blitz-Cokis, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 2.

410 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

411 Submission 45, Family Court of Western Australia, pp. 5–6.

- Facilitating a “cooling off” period before making final orders to enable the parties to have further time to reflect and/or seek legal advice; and
- Declining to make orders that are not just and equitable (in financial cases), or the in the best interests of the child (in parenting cases).<sup>412</sup>

The FV Reform Act provides that MCWA registrars will have the power to end a conference and not make an order, if they are not happy with the order proposed.<sup>413</sup> It expects that FVRO conferencing registrars will use similar techniques to those utilised by FCWA registrars during the mediation process.

#### **Finding 44**

Registrars facilitating the Family Violence Restraining Order conferencing process will be key to mitigating power imbalances between the parties, and ensuring that conferencing is effective.

#### **Recommendation 29**

That the Attorney General ensures that all registrars appointed to facilitate the Family Violence Restraining Order conferencing process have appropriate legal and family and domestic violence training and experience, and that funding is provided to ensure registrars participate in ongoing relevant training and development.

#### ***Legal representation and support services remain important features***

Witnesses commenting on the ACT’s conferencing process emphasised the importance of legal representation, stating that it minimises the chance the process will be overtaken by coercion and control, and provides greater scope for resolution.<sup>414</sup> It also ensures that respondents understand the impact of any decision or agreement.<sup>415</sup> Ideally, both parties should be legally represented.<sup>416</sup>

The Committee explores the issue of legal representation in detail in Chapter 5 and supports the conference process funding request for all parties to be legally represented.<sup>417</sup>

#### **Recommendation 30**

That the Attorney General ensures that sufficient funding is provided to ensure all parties that participate in the Family Violence Restraining Order conferencing process are legally represented.

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412 Submission 45, Family Court of Western Australia, pp. 5–6.

413 *Family Violence Legislation Reform Act 2020*, (WA), s. 72; Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

414 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

415 *ibid.*

416 Legal Aid ACT, *Briefing*, 27 February 2020.

417 Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 7.

The Committee also considers it fundamental that conference participants are able to access the same support services as those it recommends are available to all FVRO parties, including separate applicant and respondent support workers (see Chapter 6).

#### **Recommendation 31**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence ensure that all parties that participate in the Family Violence Restraining Order conferencing process are able to access appropriate support services throughout the entirety of Family Violence Restraining Order court proceedings.

#### ***Additional support is needed for parties with mental health issues***

One submitter raised the important issue of additional support being made available for parties with serious mental health issues. People suffering from mental health issues may benefit from the involvement of a mental health professional during the conference process. A mental health professional may be better able to communicate and help explain concepts, refer people to additional supports, and assist with de-escalation if warranted by a situation.<sup>418</sup>

#### **Finding 45**

Family Violence Restraining Order parties with acute mental health issues may need additional specialised support to participate in the Family Violence Restraining Order conferencing process.

#### **Recommendation 32**

That the Attorney General ensures that additional specialised support services are available to support Family Violence Restraining Order parties with acute mental health issues to fully participate in the Family Violence Restraining Order conferencing process.

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418 Closed hearing.



## Chapter 8

# Existing Family Violence Restraining Order processes can be improved

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### Process improvements can increase accessibility

Family Violence Restraining Orders (FVROs) are intended to protect FDV survivors by legally requiring an FDV perpetrator to stop or limit their contact with, and therefore violence against, the FDV victim. Failure to comply with an FVRO's conditions may result in a criminal charge, a fine or imprisonment. However, victims can be discouraged from engaging with the court system when processes are confusing, too onerous and/or too traumatic.

Providing alternative ways for victims to apply for an FVRO, including the Western Australia Police Force (Police) applying on their behalf, may result in more survivors taking that first step to seek help from the court system. Minimising their exposure to the perpetrator may encourage the victim to continue with an application. Notifying an applicant promptly when an interim FVRO is served, and providing support services to the respondent to understand the conditions of the order and their rights may limit further violence at what is known to be a high risk time.

This chapter makes recommendations for improving the FVRO process and, in some cases, maintaining the current system as the best way to keep survivors safe and engaged in the process.

### Family Violence Restraining Order process

#### Box 8.1: Family Violence Restraining Order Process

The Family Violence Restraining Order (FVRO) process is commenced by a person, the applicant or protected person, completing an application form to apply for an FVRO against another person, the respondent or bound person, and filing it with the appropriate court. The application could also be made by Western Australia Police Force (Police), however this occurs rarely.

The application must be accompanied by an affidavit which provides details of what has happened and is used as evidence to support the application. The affidavit needs to be signed and sworn or affirmed in front of an authorised witness, such as a lawyer or justice of the peace.

#### Where to make the application?

If the bound person is under 18 years old, the application must be made in the Children's Court of Western Australia (CCWA). If the protected person is under 18 years old, and the bound person is 18 years old or older, the application can be made in either the CCWA or the Magistrates Court of Western Australia (MCWA). In all other circumstances, the application must be made in the MCWA.

While generally made in person at the court, applications may also be made over the phone in some circumstances.

#### When will the application be heard?

When an application will be heard depends on where it is made. The Perth Magistrates Court and Perth Children's Court hear applications every day, and an application will often be heard on

the same day it is filed. Most suburban and regional courts do not hear FVRO applications every day. The application will be heard when the court next hears FVRO matters; this may take several days or longer.

### **The initial hearing**

After a written application is provided to a court, the applicant must appear before a magistrate to discuss the application.

The applicant will generally make the application on an *ex parte* basis; that is, the respondent is not told about the application and will not be present at the initial hearing.

### **Initial hearing outcomes**

An initial hearing has three possible outcomes:

1. An interim FVRO is made.
2. The FVRO application is dismissed.
3. An interim FVRO is not made but the application is not dismissed.

### **Service of an interim FVRO**

If an interim FVRO is made, it must be served on the respondent by the Police, generally in person. The interim FVRO will only come into force after it has been served on the respondent.

Once in force, the conditions of the interim FVRO are enforceable by the Police and the courts.

### **Objecting to an interim FVRO**

After a respondent is served with an order, they have 21 days to object to the interim order.

If the respondent does not object to the order within 21 days, the interim order automatically becomes a final FVRO. In limited circumstances, a respondent may object to an order after the 21 days, if they can show they have a good reason for not meeting the time frame.

If the respondent objects, the court will arrange a final hearing at which the applicant and respondent both appear. In some courts, a 'mention' hearing date may also be set before the final hearing date.

If the respondent objects to the interim FVRO, it remains in place until it becomes a final FVRO or is cancelled by the court.

### **Final Hearing**

At a final order hearing, both the applicant and the respondent will present evidence as to why the FVRO should or should not be granted. The evidence presented may involve documents, photographs, electronic communication and witnesses.

Special measures are available to minimise the potential for witnesses to be intimidated or re-traumatised through the adversarial proceedings. For example, witnesses may give evidence via closed circuit television, and the respondent cannot personally cross-examine a family member.

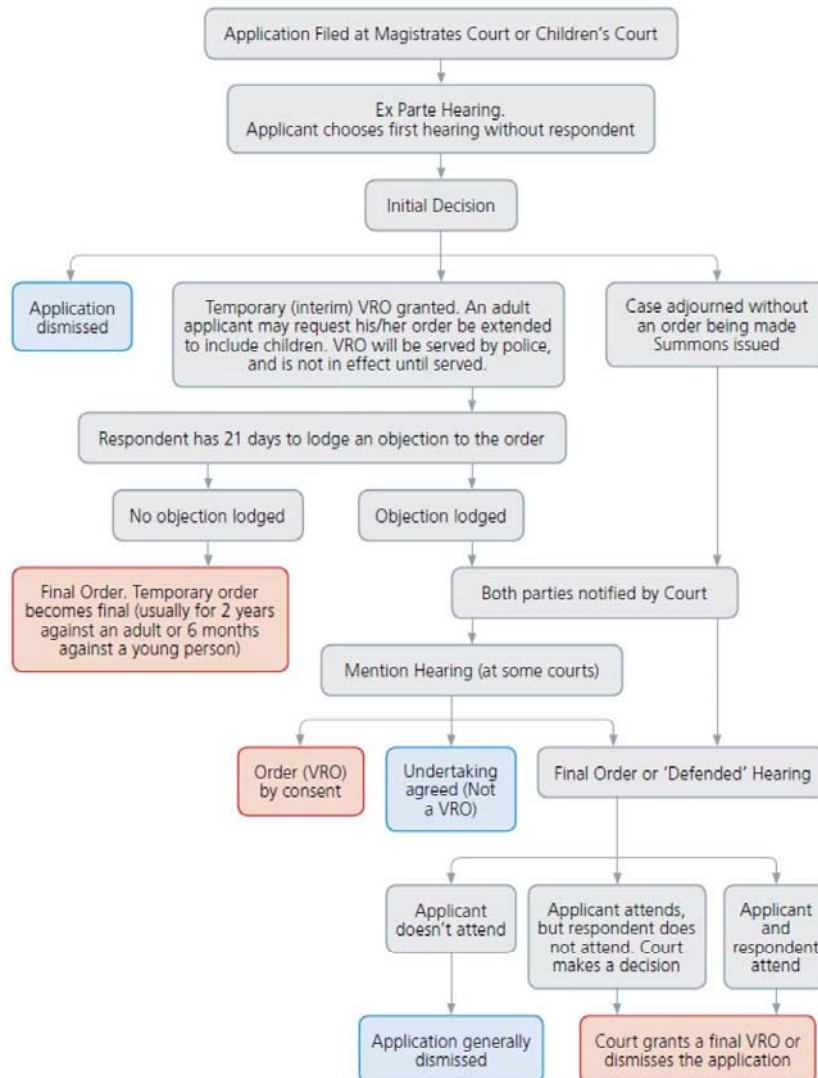
At the end of a final hearing the court will either make a final FVRO, or cancel the interim FVRO.

Sources: Submission 32, Department of Justice; Submission 38, Legal Aid Western Australia.



Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities

**Figure 27: Process for obtaining a VRO**



Source: *Breaching Safety: Improving the effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*<sup>451</sup>

<sup>451</sup> Chung, D, Green, D and Smith G, et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, p. 25.

### Consistency of process varies across courts

Box 8.1 above sets out the general process for applying for and receiving an FVRO. However, with 28 different Magistrates Court of Western Australia (MCWA) registries receiving and hearing FVRO applications, the court process can vary depending on court location, practice, resourcing, the volume and complexity of matters, and the availability of judicial officers.<sup>419</sup> Although differing processes may create some confusion for court users, it also creates flexibility for magistrates and courts to respond to the specific circumstances of that court.

### Applying for a Family Violence Restraining Order

Some submissions suggested greater online resources, including videos, would assist court users to gain an understanding of court processes prior to coming to court. The Children's Court of Western Australia spoke of the recent success it had in creating videos with Legal Aid Western Australia (LAWA) to outline the Violence Restraining Order (VRO) process for children.<sup>420</sup>

Although the MCWA website contains limited information on the FVRO process, it links to LAWA's website which contains a plethora of useful information, including video guidance.<sup>421</sup> The Committee found this guidance to be accessible and useful, therefore it may be a matter of working to improve awareness of the available resources, rather than the resources themselves.

Living Proud, one of Western Australia's main LGBTI community services organisations, suggested that the MCWA website should expressly state that people in same sex relationships can apply for FVROs.<sup>422</sup> The Committee agrees that a simple addition to the MCWA website would provide clarity for LGBTI people experiencing FDV.

#### Finding 46

The Magistrates Court of Western Australia's website contains limited information about who can apply for a Family Violence Restraining Order, and the process.

#### Recommendation 33

That the Attorney General directs the Department of Justice to update the Magistrates Court of Western Australia's website to expressly state that intimate or family-type relationships including same-sex relationships are eligible relationships for the purpose of Family Violence Restraining Orders.

419 Submission 32, Department of Justice, p. 4.

420 Judge Julie Wager, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 12.

421 Legal Aid Western Australia, *Interim Family Violence Restraining Order Guide*, n.d., accessed 20 April 2020, <<https://www.legalaid.wa.gov.au/resources/self-help-kits-and-guides/interim-family-violence-restraining-order-guide>>.

422 Submission 40, Living Proud LGBTI Community Services of WA, p. 1.

### **Individuals should be able to lodge an electronic Family Violence Restraining Order application**

On 11 May 2020, the Western Australian Government introduced the capacity for FVRO applications to be made online through an approved organisation.<sup>423</sup> Currently, the approved organisations include eight LAWA offices located around the state.<sup>424</sup> Prior to this a victim had to apply for an FVRO at an MCWA registry in person, or in limited cases, via telephone. The vast majority of applications are made in person. In 2017–18 only nine FVRO applications were made via telephone, and five were made during 2018–19.<sup>425</sup>

The Committee has not had the opportunity to gather further evidence on this recent development, however it is pleased with any action that makes the MCWA more accessible. That said, the Committee notes that only a limited number of organisations can assist an applicant to make the application online. While this may encourage applicants to seek legal advice or other support prior to making an online application, the Committee considers there is also benefit to allowing direct online applications.

The Neighbourhood Justice Centre (NJC) in Melbourne has, for a number of years, offered an online Family Violence Intervention Order (FVIO) application form. The forms includes information about when and how the court can contact the applicant safely, as well as providing the opportunity for the applicant to highlight any particular safety concerns.<sup>426</sup> Registry staff respond to online application forms within 24 hours of receipt.<sup>427</sup>

Staff at the NJC advised the Committee that the online form was more user friendly, convenient for applicants, easier for registry staff to process and identify risk, and had in-built safety features.<sup>428</sup> Victoria's Royal Commission into Family Violence recommended that all Victorian courts rollout an online application form.<sup>429</sup> This recommendation is currently underway and was due to be completed by 30 June 2020.<sup>430</sup>

An evaluation of the rollout to Victorian courts found high levels of victim satisfaction and overwhelming efficiency gains. Trial sites found the time from application lodgement to hearing was reduced by an average of 12.8 days, and average hearing durations were reduced by more than an hour.<sup>431</sup>

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423 The Hon. John Quigley MLA, Attorney General, and the Hon. Simone McGurk MLA, Minister for Prevention of Family and Domestic Violence, *Victims of violence able to apply for restraining orders online*, media release, 12 May 2020.

424 Victims of Crime Commissioner, *Restraining orders*, 11 May 2020, accessed 15 May 2020, <[https://www.victimsofcrime.wa.gov.au/R/restraining\\_orders.aspx](https://www.victimsofcrime.wa.gov.au/R/restraining_orders.aspx)>.

425 Submission 32A, Department of Justice, p. 1.

426 Submission 25, Dr Sarah Murray, p. 1.

427 Neighbourhood Justice Centre, *Briefing*, 25 February 2020.

428 *ibid.*

429 Royal Commission into Family Violence, *Report and recommendations: Volume III*, Victorian Government, March 2016, Recommendation 74, p. 174.

430 Victorian Government, *Magistrates' Court roll out an online application form for intervention orders*, 18 May 2020, accessed 31 July 2020, <[https://www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation\\_id=183](https://www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation_id=183)>.

431 Neighbourhood Justice Centre, *Briefing*, 25 February 2020.

The Committee was impressed by the apparent benefits to the court and applicants. Introducing this broader online application process would lead to similar benefits in Western Australia, improving MCWA accessibility for FDV victims. The Committee notes that in making the FVRO process more accessible for applicants, it will also be more accessible for vexatious litigants. However, the benefit to vulnerable applicants in making the court more accessible is more than enough to offset this potential risk.<sup>432</sup>

**Finding 47**

Online Family Violence Restraining Order applications make the court process more accessible for potential applicants.

**Recommendation 34**

That the Attorney General ensures that Family Violence Restraining Order applications can be completed online by any potential applicant, with or without the assistance of a designated legal or support service.

***Online applications provide flexibility in nominating a safe court registry to hear a Family Violence Restraining Order application***

The Women's Council for Family and Domestic Violence Services (Women's Council) raised an issue with an FVRO identifying the location of the court at which it was granted. The location of the court may give a respondent an indication of where the applicant is staying, which is particularly concerning for women accommodated in refuges. Refuges try to minimise this risk by taking women at higher risk into the Perth Magistrates Court to apply for an FVRO, however this is not always possible.<sup>433</sup>

The Department of Justice advised the Committee that it is not currently possible to issue an FVRO without it stating the location of the court registry from which it was issued;<sup>434</sup> legislative and administrative amendments would be required for this to occur.<sup>435</sup> However, the recent introduction of online lodgement of FVRO applications allows the applicant to nominate a court registry.

The Committee considers that this option improves flexibility for FVRO applicants to nominate a MCWA registry that does not indicate the applicant's location, combined with its recommendation for the court to hold more initial hearings via remote or videolink technology. However, best practice would involve the option of initiating applications through a generic registry location that would ensure that the safety risks identified by the Women's Council are fully addressed.

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432 Ms Heidi Yates, Victims of Crime Commissioner (ACT), *Briefing*, 27 February 2020.

433 Submission 12, Women's Council for Family and Domestic Violence Services, p. 3.

434 Submission 32B, Department of Justice, p. 7.

435 Submission 10A, Chief Magistrate of Western Australia, p. 3.

**Recommendation 35**

That the Attorney General ensures that Family Violence Restraining Order applications can be initiated through a generic or central registry that does not identify the location of the applicant to eliminate any associated potential risks to the applicant.

**Western Australia Police Force should make more Family Violence Restraining Order applications on behalf of family and domestic violence victims**

In addition to issuing Police Orders (see Box 8.2) Police may apply for an FVRO on behalf of a protected person. In 2017–18, Police lodged only 37 FVRO applications, and in 2018–19 they lodged only 43. These low numbers, approximately 0.35% of all FVRO applications, are attributed to two factors. Firstly, the *Restraining Orders Act 1997* (RO Act) allows Police to make an application on behalf of a person seeking to be protected.<sup>436</sup> Police interpret this to mean that the person to be protected must instruct them to apply for an FVRO. Police cannot apply of their own volition.<sup>437</sup> Secondly, Police do not currently have sufficient resources to apply for significant numbers of FVROs on behalf of survivors.<sup>438</sup> This resourcing issue was raised by the Law Reform Commission of Western Australia (LRCWA) in 2014, which recommended that Police be sufficiently resourced so that it may make FVRO applications on behalf of victims.<sup>439</sup> This recommendation has not been implemented.

The Community Development and Justice Standing Committee of the 39<sup>th</sup> Parliament discussed the role of Police applying for a VRO in its report tabled in October 2015. At that time, Police did not consider applying for VROs was the best use of their time. It suggested that perhaps there were other organisations that could take on that role. Aboriginal Family Law Services (AFLS) then Chief Executive Officer, Mary Cowley, supported Police applying for VROs on behalf of FDV victims, suggesting that ‘customer service officers within police stations could be trained to complete the applications.’<sup>440</sup> No recommendation was made.

Other Australian jurisdictions vary significantly in their approach to police applying for FVROs. In the Australian Capital Territory (ACT), police do not apply for many Family Violence Orders on behalf of a person to be protected. However, there has been increasing pressure on police to instigate applications, particularly in cases of elder abuse, or where the protected person is from a culturally and linguistically diverse community. Ms Heidi Yates, ACT Victims of Crime Commissioner, noted that one reason to support police taking out orders on behalf of victims is that it cannot be assumed that a victim wants to be the person making the application, particularly as being the applicant may increase the risk to the victim’s safety.<sup>441</sup>

436 *Restraining Orders Act 1997*, (WA), ss. 18 and 24A.

437 Superintendent Martin Cope, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 6.

438 *ibid.*

439 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 20, p. 91.

440 Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *A measure of trust: how WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly of Western Australia, October 2015, p. 25.

441 Ms Heidi Yates, Victims of Crime Commissioner (ACT), *Briefing*, 27 February 2020.

By contrast, Queensland Police take a more active role in applying for Domestic Violence Protection Orders (DVPOs) on behalf of victims. If the Queensland Police officers witness FDV, they must apply for a DVPO, even if the person to be protected opposes the application.<sup>442</sup> In the nine months to 31 March 2020, 70% of DVPO applications were lodged by Queensland Police.<sup>443</sup> Police can also appear in court behalf of the victim. The Magistrates Courts of Queensland consider this to be a ‘great help in expediting the matter and helping the aggrieved persons obtaining appropriate protection.’<sup>444</sup>

Victoria Police can also initiate an application for an FVIO. The proportion of FVIO applications initiated by police has grown steadily for the last five years. In 2014–2015, 67.8% of applications were initiated by Victoria Police; by 2018–2019, the figure was 73.8%.<sup>445</sup> Domestic Violence Victoria, the state’s peak body for specialist FDV services for women and children, said that this approach does not work for everyone, but on the whole it is a good power for the police to have. FDV survivors in favour of the approach often feel relieved that the decision making about orders sits with police.<sup>446</sup>

South Australia Police can apply directly to a court for an intervention order. In the nine months to 31 March 2020, 2,188 interim orders were issued by police directly. South Australia Police applied to the court for 217 intervention orders, and only 154 intervention order applications were initiated by non-police.<sup>447</sup>

The Committee considers the Western Australia Police Force should actively seek instruction from victims to apply for an FVRO, and should be sufficiently resourced to do so. Some victims may want the protection of an FVRO, without being named as the applicant. Further, ‘[m]agistrates would spend less time hearing applications because police giving evidence on behalf of the applicant would be better at explaining accurately what had happened than a victim who is typically traumatised and nervous.’<sup>448</sup>

#### **Finding 48**

That the Western Australia Police Force seldom initiates Family Violence Restraining Order applications on behalf of family and domestic violence victims, despite having the power to do so.

442 Magistrates Courts of Queensland, *Annual Report 2018–2019*, Queensland, 25 October 2019, p. 26.

443 Queensland Courts, *Queensland Courts’ domestic and family violence (DFV) statistics*, April 2020, accessed 28 April 2020, <<https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>>.

444 Magistrates Courts of Queensland, *Annual Report 2018–2019*, Queensland, 25 October 2019, p. 26.

445 Crime Statistics Agency, *Magistrates’ Court*, December 2019, accessed 28 April 2020, <<https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>>.

446 Domestic Violence Victoria, *Briefing*, 25 February 2020.

447 Courts Administration Authority of South Australia, *Intervention Orders*, n.d., accessed 28 April 2020, <<http://www.courts.sa.gov.au/OurCourts/CourtsAdministrationAuthority/statistics/Pages/Intervention-Order-Statistics.aspx>>.

448 Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *A measure of trust: how WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly of Western Australia, October 2015, p. 25.

**Finding 49**

There would be significant benefits to the Western Australia Police Force initiating Family Violence Restraining Order applications on behalf of victims of family and domestic violence.

**Recommendation 36**

That the Minister for Police ensures that the Western Australia Police Force officers actively seek instructions from a victim of family and domestic violence to make a Family Violence Restraining Order application on the victim's behalf when attending a family and domestic violence incident, and that the Western Australia Police Force is appropriately trained and sufficiently resourced to take on this role.

**Recommendation 37**

That the Minister for Police ensures the Western Australia Police Force report in its annual report on the number of Family Violence Restraining Order applications initiated on behalf of victims of family and domestic violence.

***A Police Order could operate as an application for a Family Violence Restraining Order***

In South Australia, a police officer can issue a Police Interim Intervention Order (PIIO) against an FDV perpetrator. The PIIO acts like an interim FVRO in Western Australia, providing immediate and ongoing protection to the FDV survivor until the matter is heard by a court. The PIIO comes into effect immediately upon being given to the perpetrator, and can be issued without the agreement of the protected person. The PIIO provides the perpetrator with a court date within eight days, or within two days of the next court sitting.<sup>449</sup>

The LRCWA discussed the possibility of a Police Order (see Box 8.2) acting as an application for a VRO. Allowing this may be beneficial in terms of 'victim support and efficiency'<sup>450</sup> by reducing trauma and stress for FDV victims, and encouraging greater Police involvement. However, if a Police Order automatically acts as an FVRO application, it may discourage victims from contacting Police if they do not want longer term protection.<sup>451</sup> Therefore, submitters were more in favour of requiring the FDV survivor to consent to a Police Order becoming a VRO application.<sup>452</sup>

The LRCWA made no recommendation on the subject, as it considered the lack of Police resources would mean that FDV victims would still need to take responsibility for the

449 Submission 37, Courts Administration Authority of South Australia, p. 1.

450 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 85, quoting Submission 35 from Legal Aid Western Australia dated 7 March 2014.

451 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 85.

452 *ibid.*, pp. 84–85, quoting Submission 20 from Department for Child Protection and Family Support dated 14 February 2014 and Submission 29 from Relationships Australia dated 28 February 2014.



application. However, it strongly suggested that legislation be amended to provide that Police Orders may initiate VRO proceedings, if the protected person consents.<sup>453</sup>

The Ombudsman further considered this issue in 2015 and noted that Police Orders were increasingly being used, particularly to protect Aboriginal FDV survivors. The then Department of the Attorney General was still considering the LRCWA's recommendations, including consulting with stakeholders. The Ombudsman thus recommended that Aboriginal people were consulted on any proposal to amend legislation to provide that a Police Order can operate as an application for an VRO.<sup>454</sup>

The Committee is not aware of the Western Australian Government's response to the LRCWA's report, nor the outcome of this consultation process, other than there was no corresponding legislative amendment. The Committee considers that the government should either fully canvas this issue, or make public the consultation process in response to the LRCWA's report and reasons for not amending the legislation to allow Police Orders to operate as an application for an FVRO.

**Finding 50**

There would be benefits to a Police Order operating as a Family Violence Restraining Order application, upon the instruction of the person to be protected.

**Recommendation 38**

That the Attorney General amends the *Restraining Orders Act 1997* to provide that a Police Order can operate as a Family Violence Restraining Order application, if the person to be protected by the order so instructs.

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453 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, pp. 85–86.

454 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, Recommendation 15, pp. 153–154.



**Box 8.2: Police Orders**

If a police officer reasonably believes that a person has committed family violence, and is likely to commit family violence again, the officer may issue a Police Order against that person. A Police Order restricts the person bound by the order from undertaking activities or engaging in behaviour that could amount to family violence.

A Police Order lasts for up to 72 hours after it has been served and it cannot be extended or renewed, although a new incident of family violence could lead to another Police Order being granted. Breaching a Police Order is a criminal offence.

**Table 8.1—Family and Domestic Violence reported incidents and number of Police Orders issued**

	2015	2016	2017	2018	2019
Family violence incidents (crime)	26,912	31,315	28,744	28,945	31,226
Family violence incidents (general)	21,819	22,486	20,092	17,932	16,935
Police Orders issued	21,015	22,804	23,089	22,665	21,496

For full notes on table see Submission 39A, Western Australia Police Force. Select notes on table:

1. During this period the definition of a family/domestic relationship changed.
2. Whether an incident is included in this reporting is dependent on the operational assessment of officers and recording of the incident.

The Police Order was introduced as an immediate, practical step that a police officer could take to protect FDV victims, and interrupt the cycle of violence by preventing a violent offender from staying at home.<sup>455</sup>

Sources: *Restraining Orders Act 1997 (WA)*; Submission 39A, Western Australia Police Force, p. 1.

The Western Australian Government should explore enabling the Police to apply for an FVRO without specific instructions from the person to be protected. Removing the requirement for instruction may mean more applications are made, and fewer applications withdrawn, due to ongoing intimidation from the FDV perpetrator, or reconciliation between the FDV victim and perpetrator.<sup>456</sup> While some FDV victims may feel less in control of a situation, and reluctant to cooperate and provide evidence to the court if they do not want the FVRO granted, others may be relieved that the Police makes the decision. The Police should be adequately resourced to exercise this power.

**Finding 51**

There may be benefits to the Western Australia Police Force being able to unilaterally apply for a Family Violence Restraining Order to protect a victim of family and domestic violence, including without the agreement of the person to be protected by the order.

455 The Hon. Jim McGinty MLA, Attorney General, Legislative Assembly, *Hansard*, 2 June 2004, p. 3305.

456 Professor Greg Reinhardt, Australasian Institute of Judicial Administration, *Briefing*, 26 February 2020.

### Recommendation 39

That the Attorney General and the Minister for Police amend the *Restraining Orders Act 1997* to provide the Western Australia Police Force with the power to make an application for a Family Violence Restraining Order without specific instruction or agreement of the victim.

### ***The duration of Police Orders should not be extended***

The Police Order was intended to provide time for the FDV victim to apply for an FVRO.<sup>457</sup> However, in some cases, particularly in regional and remote areas, a victim may not have the opportunity to make an application, or the application cannot be heard by the MCWA, within the 72-hour timeframe. Such delays will leave a victim unprotected once the Police Order has expired.<sup>458</sup>

The LRCWA discussed but made no recommendation about extending the duration of a Police Order in certain circumstances. Some submitters to that inquiry supported lengthening the duration of a Police Order as this would provide victims with adequate time to consider their options.<sup>459</sup>

The Committee canvassed possibilities of either extending the duration of a Police Order, or allowing Police discretion regarding their duration. The Department of Justice cautioned against amending the legislation to allow for a Police Order to be in force until an interim FVRO is in place. Such a change may cause unacceptable ambiguity, and not all Police Orders necessarily precede FVRO applications.<sup>460</sup>

The Police also preferred not to issue a Police Order for longer than 72 hours, as they considered this a decision that a court should be making.<sup>461</sup> The Police suggested that rather than extending the duration of the Police Order, FDV victims need better access to magistrates to hear their applications in a timely manner.

Ultimately, the Committee is persuaded by the arguments put forward by the Department of Justice and the Police and does not support extending the duration of Police Orders. Other recommendations throughout the report, such as increasing the MCWA's resources (see Chapter 3), and the greater use of technology for those who cannot access physical court locations (see below) should lessen delays in FDV victims accessing court.

### Finding 52

The duration of Police Orders should not be extended.

457 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 7.

458 Submission 12, Women's Council for Domestic and Family Violence Services, p. 3.

459 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 85, quoting Submission 24 from Women's Council for Domestic and Family Violence Services and Domestic Violence Legal Workers Network dated 28 February 2014.

460 Submission 32A, Department of Justice, p. 2.

461 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 7.

### **People with mental health issues need additional support applying for a Family Violence Restraining Order**

People with an acute mental illness will likely need greater assistance to access the judicial system, yet there is no specialised support to assist them to apply for an FVRO.<sup>462</sup> This leaves particularly vulnerable people without the capacity to access a judicial remedy that could help keep them safe.

As '[w]omen with mental illness experience higher rates of violence than those without mental illness',<sup>463</sup> access to assistance is important. It may be appropriate that certain court and support service staff receive additional training in relation to mental illness to allow them to provide the support needed.

#### **Finding 53**

People with acute mental health issues may need additional support to apply for Family Violence Restraining Orders.

#### **Recommendation 40**

That the Attorney General ensures the availability of a specialist legal advice and support service to assist people with acute mental health issues to apply for a Family Violence Restraining Order.

### **Affidavits in support of an application**

An FVRO applicant may provide an affidavit in support of their FVRO application<sup>464</sup> to provide evidence to assist the magistrate to decide whether or not to grant an interim FVRO. Using an affidavit minimises the need to provide verbal evidence, potentially minimising re-traumatisation caused by testifying orally,<sup>465</sup> and reducing the applicant's stress at participating in court proceedings.<sup>466</sup> The MCWA has a detailed affidavit template that an applicant can use to support their FVRO application.<sup>467</sup>

However, the Committee heard anecdotal evidence that, in some instances, the time required to complete an affidavit means the application cannot be heard on the same day, delaying the process.<sup>468</sup>

The Committee considers the affidavit a useful part of the FVRO process, for both the applicant and the court. The Committee's recommendations throughout the report, particularly in relation to on-site support services and all parties having legal representation,

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462 Closed hearing.

463 Health and Human Services, *Chief Psychiatrist's guideline and practice resource: family violence*, Victorian Government, June 2018, p. 6.

464 *Restraining Orders Act 1997*, (WA), s. 28.

465 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 95.

466 Submission 12, Women's Council for Family and Domestic Violence Services, p. 3.

467 Magistrates Court of Western Australia, *Fees, Forms and Factsheets*, n.d., accessed 29 April 2020, <<https://www.magistratescourt.wa.gov.au/apps/DocList/doclist.aspx>>.

468 Submission 12, Women's Council for Family and Domestic Violence Services, p. 3.

may assist in the timely preparation of affidavits, therefore reducing potential delays in the initial application being heard.

## Initial Hearings

Once an applicant lodges their application for an interim FVRO, the matter will go before a magistrate for consideration.

### *Ex parte* hearings

Applicants can choose whether to have their initial FVRO application heard in the absence of the respondent, that is, *ex parte*.<sup>469</sup> Applicants will often exercise this choice as often there has been a recent incident of violence, possibly with Police involvement, that prompts the application.<sup>470</sup> The LRCWA described this option as 'vital' for FDV victims as prior notice of an FVRO application may put a victim's safety in jeopardy.<sup>471</sup> However, LRCWA also noted a tension as there was the potential for significant consequences for respondents subject to interim orders.<sup>472</sup>

***Almost 100% of all first hearings for Family Violence Restraining Orders are heard in the absence of the Respondent.***

*– Chief Magistrate Steven Heath*

The *ex parte* FVRO application is not the normal process of natural justice.<sup>473</sup> One submitter suggested that respondents are not afforded procedural fairness,<sup>474</sup> and that the *ex parte* application makes it too easy for vexatious litigants to be granted interim FVROs.<sup>475</sup> Respondents do not have the opportunity to participate in the process until after they are bound by an interim FVRO, at which point they may be bound for months and incur significant legal expenses trying to defend themselves.<sup>476</sup> One submitter suggested that when an applicant chooses to have an initial hearing *ex parte*, they must explain why they want the initial hearing to be held *ex parte*.<sup>477</sup> The submitter also suggested that greater emphasis should be put on non-adversarial methods of resolving disputes.<sup>478</sup>

Despite the potential challenges for respondents, the Committee considers the *ex parte* initial hearing to be an important option for applicants to reduce the risk of harm. The LRCWA's consideration of this issue was detailed and comprehensive, and it made no recommendation for legislative change.<sup>479</sup> The Committee considers that some of the challenges potentially faced by respondents will be minimised by other recommendations

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469 *Restraining Orders Act 1997*, (WA), s. 26.

470 Submission 17, Gosnells Community Legal Centre Inc., p. 1.

471 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 81.

472 *ibid.*

473 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 9.

474 Closed submission.

475 *ibid.*

476 *ibid.*

477 *ibid.*

478 *ibid.*

479 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 81.

made in this report, including ensuring respondents have access to legal representation, matters being finalised in a timely manner, and magistrates and staff having sufficient knowledge about the dynamics of FDV.

**Finding 54**

It is important that Family Violence Restraining Order applicants continue to have the option to elect that the initial hearing can be conducted in the absence of the respondent.

**Initial hearings by telephone or videolink**

Court proceedings can be conducted via telephone; however, this occurs infrequently in FVRO matters. AFLS noted that ‘telephones are not really an adequate way of dealing with the Indigenous population’, particularly if English is not the first language of the applicant or respondent. Further, there is a ‘telecommunication blackhole in a lot of regions, so being able to use the telephone is often a problem in itself.’<sup>480</sup>

The MCWA also has videolink facilities available at all courthouses across the state to connect court users with magistrates to hear matters more promptly.<sup>481</sup> The Committee is not aware how regularly these facilities are used, or the extent to which FVRO applicants can link in from videolink facilities external to court locations. However, a recent announcement by the Attorney General indicates that these facilities will be put to greater use from now on.<sup>482</sup>

Ms Heidi Yates, ACT Victims of Crime Commissioner, suggested that a legal advisor or support service advisor could sit in a safe location with his or her client who would appear at the initial hearing remotely. This would potentially reduce demand for duty lawyers, who are often under considerable time constraints, whilst lawyers situated outside the court could provide assistance for longer hours.<sup>483</sup> It would overcome the practical issues of finding and paying for parking, and may ease the burden of arranging child care.

The COVID-19 pandemic has required governments, businesses and individuals across the world to be flexible and innovative in the way they meet and communicate. With limitations on the number of people in one area, and large numbers of people working from home, many organisations have utilised virtual applications to continue to meet and work at a safe distance. Although these restrictions have now lifted in Western Australia, the pandemic continues across the world, and restrictions may be reintroduced if the situation worsens across the state, or in the event of future public health emergencies.

The Committee considers that now is a good time for the MCWA to proactively assess its remote and virtual capabilities, and consider how this can be used, improved and expanded as a matter of course, not just as a response to a public health emergency. Many FDV victims would likely benefit from greater use of videolink or similar facilities, such as those in remote

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480 Ms Linda Cao, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 4.

481 Submission 10, Chief Magistrate of Western Australia, p. 3; Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Briefing*, 7 August 2019.

482 The Hon. John Quigley MLA, Attorney General, *Magistrates to hear court matters State-wide for the first time*, media release, 3 July 2020.

483 Ms Heidi Yates, Victims of Crime Commissioner (ACT), *Briefing*, 27 February 2020.

locations that have difficulty accessing court, and those who have safety concerns about being in court.

**Finding 55**

Conducting Family Violence Restraining Order proceedings via telephone or videolink improves the accessibility of the Magistrates Court of Western Australia, particularly for court users who live in regional and remote areas.

**Recommendation 41**

That the Attorney General ensures that the Magistrates Court of Western Australia has sufficient funding to enhance its telecommunications capability for Family Violence Restraining Order parties to appear in proceedings by remote or virtual mechanisms, with a view to greater utilisation of this technology in the future.

**Signage about bringing a support person into court**

FVRO applications are heard in a closed courtroom, however applicants can be accompanied by a support person. Several submitters noted that this happens infrequently. It was suggested that the court should have signage in the registry or waiting rooms to inform applicants of this role.<sup>484</sup> The Committee agrees that this would be a simple, practical step that the MCWA could take to inform applicants of this capacity.

**Finding 56**

Some Family Violence Restraining Order applicants may be unaware that a support person can accompany them into the court room during proceedings.

**Recommendation 42**

That the Attorney General ensures that the Magistrates Court of Western Australia puts up signage in registries where Family Violence Restraining Order applications are heard to inform applicants that a support person may accompany them into the court room for the initial and subsequent hearings.

**Interim Family Violence Restraining Order service**

Once granted, an interim FVRO comes into effect upon service on the respondent. Service of an interim FVRO can be one of the most dangerous times for a victim of FDV.<sup>485</sup> It is therefore of paramount importance that service occurs promptly after the issuance of an interim order, and that both applicants and respondents are sufficiently supported.

**Prompt service**

Interim FVROs are served on respondents by the Police. The Committee was concerned to hear that service is often delayed due to issues reconciling respondent's personal details as entered on the FVRO, with the personal details in the Police's Incident Management

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484 Submission 12, Women's Council for Family and Domestic Violence Services, p. 2; Submission 40, Living Proud LGBTI Community Services of WA, p. 2.

485 Ms Heidi Yates, Victims of Crime Commissioner (ACT), *Briefing*, 27 February 2020.

System.<sup>486</sup> Approximately half of all interim FVROs contain incorrect or inconsistent information about the personal details of the respondent and require manual reconciliation by Police staff at the Information Capture Centre.<sup>487</sup> This unnecessary delay could be eliminated by granting designated court staff access to Police's Incident Management System to ensure FVRO information is accurate.<sup>488</sup>

Further, police officers serving FVROs should be provided with the ability to make minor amendments to the personal information of the respondent. This should only be considered in limited circumstances where, upon attempted service, the officer becomes aware that the respondent's personal details as stated on the FVRO differ from the respondent's personal details as stated in the Incident Management System.

#### **Finding 57**

Approximately half of all interim Family Violence Restraining Orders contain incorrect or inconsistent information about the personal details of the respondent, which requires manual reconciliation by Western Australia Police Force before the order can be served on the respondent.

#### **Recommendation 43**

That the Attorney General and the Minister for Police ensure that designated Magistrates Court of Western Australia staff are provided with access to the Western Australia Police Force Incident Management System for the purpose of reconciling a Family Violence Restraining Order respondent's personal information to ensure timely service of the order.

#### **Recommendation 44**

That the Attorney General and the Minister for Police further ensure that police officers have the ability to amend incorrect or inconsistent details about the personal information of the respondent of a Family Violence Restraining Order up to the point of service of the order without affecting the validity of the order.

### **Respondents must be supported upon service of a Family Violence Restraining Order**

FVROs are court documents, and the conditions they contain can be difficult to understand, particularly if the respondent speaks English as another language. Respondents can face serious consequence for breaching a condition, so it is important that they understand what an order means.

It is unlikely that an interpreter will be present when a respondent is served with an interim FVRO,<sup>489</sup> making it difficult for a respondent who speaks English as another language to

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486 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 16.

487 *ibid.*

488 Submission 39A, Western Australia Police Force, p. 4.

489 Ms Kedy Kristal, Women's Council for Family and Domestic Violence Services, *Transcript of Evidence*, 27 November 2019, p. 7.

understand, and therefore comply with, the conditions of the order.<sup>490</sup> This compromises the effectiveness of the order, and potentially the safety of the applicant.

It is also important that respondents are aware of their legal rights upon service, and how they can access support.<sup>491</sup> A respondent who does not understand the order may respond in anger, making it more dangerous for the applicant.<sup>492</sup> Providing information and assistance to the respondent may be the best opportunity for the victim's safety.<sup>493</sup>

When serving interim FVROs, police officers have an opportunity to speak with a respondent to help them understand the conditions of the FVRO, as well as where the respondent can seek support.<sup>494</sup> Police officers already explain FVROs to respondents to varying degrees, and providing police officers with greater training to have that conversation would make the most of the opportunity, and improve the quality of the information being provided. Some standardised wording to explain the practical effects of the conditions of an order, and examples of what may constitute a breach, may also help.<sup>495</sup>

It will not necessarily be easy for Police in these circumstances. A respondent may be uncooperative upon being served with an FVRO, leaving little opportunity for Police to explain its effect.<sup>496</sup> Further, if the FVRO was granted by the MCWA without an existing Family Court of Western Australia (FCWA) order disclosed, a suspected breach of the FVRO may not be a breach if it is allowed under the FCWA orders.<sup>497</sup> However, as will be discussed in Chapter 11, following recent legislative amendments, the MCWA is now required to ask the applicant about the existence of any FCWA orders and, if any exist, seek copies or information about the FCWA orders from the FCWA.<sup>498</sup> Awareness of the terms of a FCWA should reduce the potential for inconsistencies between FVROs and FCWA orders.

**Finding 58**

It is important to provide support to a respondent upon service of a Family Violence Restraining Order to ensure that they understand the conditions of the order and their legal options, as this may help minimise risk to the applicant's safety.

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490 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 6.

491 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

492 Ms Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 4.

493 Legal Aid ACT, *Briefing*, 27 February 2020.

494 *ibid.*

495 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 3.

496 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

497 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 8.

498 *Family Violence Legislation Reform Act 2020*, (WA), s. 80.



#### **Recommendation 45**

That the Attorney General work with the Minister for Police to ensure that all Western Australia Police Force officers serving Family Violence Restraining Orders on respondents receive sufficient training to adequately explain the conditions of an order to a respondent and provide information about where the respondent may seek assistance. Consideration should be given to:

- the frequency and content of training, including refresher training
- how to ensure that a respondent who speaks English as another language understands the conditions of the order
- providing standardised wording and guidelines to police officers to assist them in the provision of information to respondents and ensure consistency of the message between officers
- written information sheets, pamphlets or information in electronic form in various languages, to be provided to respondents at the time of service detailing options and where assistance may be sought.

#### **Respondents in mental health units**

The Committee was concerned to hear that FVROs are regularly served on people who have been involuntarily detained in a mental health unit in a hospital under an inpatient treatment order. Although prompt service of an FVRO is important so it can come into effect, it will likely have limited effect if the respondent has limited capacity to understand its terms, and the implications of breaching it.<sup>499</sup> A person in a mental health unit is also likely to have limited access to legal advice or other support services to assist them through the FVRO process.<sup>500</sup>

An FVRO is likely to be more effective when served upon a respondent who has capacity to understand the order. While the safety of the applicant remains the paramount consideration, Police should consult with the treating physicians to determine appropriate timing for service. It may be appropriate for the order to be served during the respondent's stay when hospital staff can assist the Police to explain the conditions of the order and allow time for the respondent to calm down if the order causes an angry reaction. Alternatively, it may be appropriate for the order to be served upon the respondent at a time when they are about to be discharged from the hospital.

#### **Finding 59**

Respondents who are served with Family Violence Restraining Orders whilst involuntarily detained in a mental health unit in a hospital under an inpatient treatment order may have a limited capacity to understand the terms of the order and the implications of breaching the order. This may lead to a risk that they may not comply with the order upon release from the facility.

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499 Closed submission.

500 Closed hearing.

#### **Recommendation 46**

That the Attorney General, the Minister for Police and the Minister for Mental Health develop a protocol for determining an appropriate time for a Family Violence Restraining Order to be served on a respondent who has been involuntarily detained in a mental health unit in a hospital under an inpatient treatment order. This protocol should set out a method of determining the appropriate time for an order to be served upon a respondent, and who is to make this decision. Factors that should be taken into account by the decision maker include the safety of the applicant, the capacity of the respondent to understand the conditions of the order, and any other matters the treating physicians may consider relevant. However, for the ongoing safety of the applicant, the protocol must ensure service is effected before the respondent is released.

#### **Notifying the applicant**

In 2014, the LRCWA recommended that Police notify an applicant as soon as practicable after a respondent has been served with the order. Notification could take place in person or by telephone, fax, SMS, email or other electronic means.<sup>501</sup> Amendments to the RO Act in April 2020 now allow the MCWA to electronically notify FVRO applicants of the service of an interim FVRO on the respondent.<sup>502</sup> Where an applicant has provided an email address or telephone number, notification occurs immediately upon service details being entered in the MCWA's Integrated Courts Management System.<sup>503</sup>

#### **Recommendation 47**

That the Attorney General and the Minister for Police report to Parliament on the operation of the newly introduced instantaneous notification system, including:

- how frequently it is used in comparison with other methods of notification of service
- the length of time passing between the service by Western Australia Police Force of a Family Violence Restraining Order on a respondent and the notification of service to an applicant via the instantaneous notification system and other methods of notification
- the experience of Family Violence Restraining Order applicants, including whether the new instantaneous notification system has been considered a positive development.

#### **Giving evidence**

##### **Protective measures need to be more accessible to victims providing evidence at contested hearings**

Concerns were raised by submitters about FDV victims' physical and emotional safety during contested hearings. There are legislative measures that courts can employ to enhance survivor safety when providing oral evidence. Witnesses may testify from a different location

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501 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 23, p. 95.

502 *Restraining Orders Act 1997*, (WA), s. 59(3); Submission 32B, Department of Justice, p. 7.

503 Submission 32B, Department of Justice, p. 7.

via closed circuit television, or behind a screen.<sup>504</sup> However, the Committee was told that ‘many court users are denied access to these protective measures.’<sup>505</sup>

The Chief Magistrate indicated that protective measures are not used ‘largely because closed circuit television facilities are not available at more Court locations.’<sup>506</sup> The Perth Magistrates Court only has one room available for all criminal and other trials on any given day. Further, ‘screening arrangements are difficult to implement and impossible when both parties are in person and cross examining each other.’<sup>507</sup> He also suggested that witnesses may be unaware that protective measures can be requested, although magistrates nonetheless have an obligation to consider whether they should be employed.

*‘it is very rare for closed circuit television or screening arrangements to be used.’*

– Chief Magistrate Steven Heath

The Committee notes the *Family Violence Legislation Reform Act 2020* includes a section regarding the use of closed circuit television or screening arrangements.<sup>508</sup> This new section is substantively similar to an existing regulation in the *Restraining Orders Regulations 1997*. By moving the provision from the regulations to the RO Act, the Western Australian Government aims ‘to raise the profile of the ability for courts to allow the use of closed circuit television in the giving of evidence.’<sup>509</sup> However, to be effective, courts need to have sufficient facilities to enable witnesses who qualify for additional protective measures to actually be able to access these measures.

#### **Finding 60**

There are insufficient closed circuit television facilities at Magistrates Court of Western Australia courts, and applicants lack awareness of such facilities where they do exist, to enable witnesses testifying in family and domestic violence related matters to access protective measures when requested.

#### **Recommendation 48**

That the Attorney General ensures that the Magistrates Court of Western Australia, at all of its locations, has the necessary facilities to provide family and domestic violence victims with access to protective measures where necessary, and to ensure that:

- family and domestic violence victims participating in Family Violence Restraining Order proceedings are made aware of the availability of protective measures
- magistrates provide an explanation as to why a request for protective measures has been declined.

504 *Restraining Orders Regulations 1997*, (WA), r. 10A.

505 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 4.

506 Submission 10A, Chief Magistrate of Western Australia, p. 4.

507 *ibid.*

508 *Family Violence Legislation Reform Act 2020*, (WA), s. 67.

509 Family Violence Legislation Reform Bill 2019, *Explanatory Memorandum*, Legislative Assembly, p. 44.

**Cross-examination by the respondent is not allowed in most circumstances**

The Committee received conflicting evidence about the ability for FVRO respondents to cross-examine applicants. The RO Act provides that, if a person bound by an FVRO is not legally represented, and wishes to cross-examine a person with whom they are in a family relationship, they cannot do so directly, but may put questions to the person via a judicial officer or other person approved by the court.<sup>510</sup> The Court is able to allow for direct cross-examination if the person to be examined allows it, or the court considers it appropriate to allow the direct cross-examination, or undesirable to not allow the direct cross-examination.<sup>511</sup>

The Department of Justice interprets this as prohibiting the respondent from cross-examining a family member.<sup>512</sup> However, AFLS interprets this as a mere discretion for the court to not allow the respondent to cross-examine a family member, which can affect a victim's willingness to appear at a final hearing.<sup>513</sup> The AFLS recommends that the RO Act is amended so that the bound person is not allowed to cross-examine the protected person at all.<sup>514</sup>

The Chief Magistrate indicated that direct cross-examination may be allowed depending on various factors, such as where the witness is a family member rather than the applicant and is therefore less likely to be intimidated. He also indicated that it may take place due to the lack of facilities. For example, under the normal process, an FVRO respondent will pose their question to the magistrate, who will then ask it to the witness. In practice, a witness will often answer the question as soon as the respondent has asked it, rather than waiting for it to be asked by the magistrate, and therefore direct cross-examination ends up taking place. Without improved facilities, the Chief Magistrate considers it would be difficult to prohibit direct cross-examination entirely.<sup>515</sup>

The Committee notes that the Parliament of Western Australia is currently considering amendments to the *Family Court Act 1997* (already legislated at a federal level) which would prevent an 'examining party' from personally cross-examining a witness in FCWA matters where certain conditions are met. These conditions include if either party has been charged with, or convicted of, a violent offence towards the other party, or if a final FVRO applies to both parties. There is no capacity for the person being examined, or the court to exercise a discretion to allow for personal cross-examination. However, there is also a higher bar to be reached in the FCWA than under the RO Act, in that a final FVRO must be in place.

The Committee is comfortable with the current cross-examination limitation contained in the RO Act, which it sees as essentially a rebuttable presumption that a respondent will not be able to cross-examine the applicant. However, to operate more effectively, courts must have sufficient facilities to provide safe alternatives to direct cross-examination, as

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<sup>510</sup> *Restraining Orders Act 1997*, (WA), s. 44C.

<sup>511</sup> *ibid.*

<sup>512</sup> Submission 32, Department of Justice, p. 4.

<sup>513</sup> Submission 16, Aboriginal Family Law Services, p. 14.

<sup>514</sup> *Restraining Orders Act 1997*, (WA), s. 44C.

<sup>515</sup> Submission 10A, Chief Magistrate of Western Australia, p. 4.

recommended above. Further, magistrates must have a strong understanding of the dynamics of FDV (see Chapter 4).

### **Sanctions for vexatious proceedings and giving false evidence are sufficient**

A number of submitters were concerned about the lack of accountability for FVRO applicants giving false evidence to a court to support their application for an FVRO.<sup>516</sup> Submitters argued that applicants were using FVROs as weapons against respondents to get more child support, influence children or influence the outcome of FCWA matters.<sup>517</sup>

In some cases, FDV perpetrators may misuse the judicial system to continue their violence upon their victim.<sup>518</sup> A cross-application is where the respondent to one FVRO application brings their own FVRO application against the applicant in the original FVRO application. Cross-applications may be legitimate, where both parties have engaged in violent conduct. However, in some cases, a cross-application can be a way that FDV perpetrators continue to coerce and control their victim.<sup>519</sup> Cross-applications, and other behaviour that delays proceedings, may not only have financial implications for the original applicant, but also cause them further emotional distress.<sup>520</sup> Cross-applications may affect FCWA proceedings, or pressure the original FVRO applicant to discontinue proceedings or agree to mutual orders.<sup>521</sup>

The Australian Law Reform Commission and New South Wales Law Reform Commission considered the issues of vexatious proceedings, cross-applications and giving false evidence in 2010. It concluded that the existing sanctions available to be used against someone who gives false evidence were sufficient.<sup>522</sup> In Western Australia, any person who gives false testimony in any judicial proceedings is guilty of a crime.<sup>523</sup> Further, courts have the capacity to make a costs order against an applicant if the court considers the FVRO application to be frivolous or vexatious.<sup>524</sup> Courts may also make a costs order against a respondent for objecting to an interim FVRO.<sup>525</sup>

The Committee agrees with the Australian Law Reform Commission and New South Wales Law Reform Commission's conclusion that current sanctions available to the court are sufficient to deter false allegations in most cases. Tougher sanctions or more onerous evidentiary requirements may have the undesirable outcome of deterring FDV survivors from accessing court processes, particularly when the FDV is not physical so there may be

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516 Closed submissions.

517 *ibid.*

518 Brisbane Domestic Violence Service, *Briefing*, 28 February 2020.

519 *ibid.*

520 Submission 20, Relationships Australia WA Inc., p. 4.

521 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Volume 1*, ALRC Report 114 and NSWLRC Report 128, Australian Government, Sydney, October 2010, p. 880.

522 *ibid.*, p. 837.

523 *The Criminal Code*, (WA), s. 124.

524 *Restraining Orders Act 1997*, (WA), s. 69.

525 Submission 10, Chief Magistrate of Western Australia, p. 4.

limited evidence available to support proceedings.<sup>526</sup> The Committee considers that its recommendations regarding judicial experience and education in understanding the dynamics of family violence are the best way to identify FDV, including attempts to misuse the court system.

### **Ordering a respondent to attend a behaviour change program is an important power that is rarely exercised**

The RO Act was amended in 2016 to provide a court that has made a final FVRO with the power to order the respondent to attend a behaviour change program.<sup>527</sup> When putting forward these amendments, the government said:

This signals a significant step for the justice system in dealing with the causes of family violence, as opposed to simply dealing with the consequences of family violence. The objective is to maximise the opportunity to engage with the perpetrator when they come before the court to encourage them to accept responsibility for the violence they have committed and thereby prevent further family violence from being committed. The bill allows for the capacity of courts to make these orders to be developed over time as suitable programs become available.<sup>528</sup>

However, such orders are rarely, if ever, made due to the lack of available programs, and a lack of funding for attendance.<sup>529</sup> The Committee is concerned that the government went to the effort of changing the legislation without providing sufficient resources for it to be implemented. The government should provide sufficient funding for this legislative mechanism to be used, and the MCWA should create guidelines on considerations magistrates may take into account in deciding whether to make such an order.

#### **Finding 61**

Magistrates making final Family Violence Restraining Orders rarely include a condition requiring the respondent to attend a family and domestic violence perpetrator behaviour change program. This is exacerbated by the lack of availability and accessibility of these programs, particularly in regional areas.

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526 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Volume 1*, ALRC Report 114 and NSWLRC Report 128, Australian Government, Sydney, October 2010, p. 837.

527 *Restraining Orders Act 1997*, (WA), Part 1C.

528 The Hon. Liza Harvey MLA, Minister for Police, Legislative Assembly, *Hansard*, 16 November 2016, p. 8189.

529 Submission 38, Legal Aid Western Australia, p. 10; Submission 16, Aboriginal Family Law Services, p. 11; Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 3.

#### **Recommendation 49**

That the Attorney General ensures that the Chief Magistrate of the Magistrates Court of Western Australia:

- reminds all magistrates of the capacity to include a condition in a Family Violence Restraining Order requiring a respondent to attend a family and domestic violence perpetrator behaviour change program
- creates guidelines on circumstances where it may be appropriate for a magistrate to include a condition in a Family Violence Restraining Order requiring a respondent to attend a family and domestic violence perpetrator behaviour change program, and how such a condition may be overseen and enforced.

#### **Recommendation 50**

That the Attorney General ensures sufficient funding for family and domestic violence perpetrator behaviour change programs to ensure they are available for Family Violence Restraining Order respondents to attend where required.

#### **Recommendation 51**

That the Attorney General ensures that the Department of Justice report in its annual report on the utilisation of family and domestic violence perpetrator behaviour change programs.

### **Process improvement should be ongoing**

In this chapter, the Committee has made recommendations to improve the FVRO process for parties and the courts alike. In Chapter 11, the Committee discusses this in broader terms, recommending the development of an overarching plan for family and domestic violence matters in the MCWA, led by a strategic oversight group.

Court users should also have the opportunity to provide feedback about issues they may have experienced during their interactions with the court (not about the matter outcome which is subject to an appeals process). Although there are some complaints mechanisms available,<sup>530</sup> submitters to this inquiry suggested court users were unaware of these. Court registries should display signage and have pamphlets in waiting areas outlining how a court user can provide feedback about their experience.<sup>531</sup> Courts should also develop a method to review the feedback, establish its veracity, and make any necessary changes. Courts should also ensure that their complaints mechanism is child-friendly.<sup>532</sup>

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530 Submission 32B, Department of Justice, p. 5.

531 Submission 12, Women's Council for Family and Domestic Violence Services, p. 2; Submission 40, Living Proud LGBTI Community Services of WA, p. 1.

532 Submission 27, Commissioner for Children and Young People (Western Australia), p. 3.

**Recommendation 52**

That the Attorney General ensures that all Magistrates Court of Western Australia registries display information on how court users can provide feedback about court processes, but not the outcome of matters. This information should be provided in different languages and should be child-friendly.

The Department of Justice is currently undertaking a statutory review of the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* which introduced the FVRO regime.<sup>533</sup> The Committee suggests that some of the recommendations made in this chapter, and throughout the report, may be relevant to that review, subject to its scope.

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533 Submission 32B, Department of Justice, p. 9.



## Chapter 9

# Specialist family and domestic violence courts in Western Australia need clear objectives

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### Specialist family violence courts need defined objectives

Specialist family and domestic violence courts within the Magistrates Court of Western Australia (MCWA) have existed for many years to attempt to deal with FDV-related criminal matters in a more holistic way than mainstream criminal courts. Currently, most metropolitan courts operate a Family Violence List (FV List) to deal with these matters on a designated day each week or fortnight with specialist personnel and additional support services.

This chapter discusses the evolution of specialist FDV courts in Western Australia for criminal matters. Changes in the operating model of these courts have occurred over time, although the changes have not always been guided by a clear vision of what the specialist FDV courts are trying to achieve. While there have been improvements, some of the changes have had no clear purpose or have not achieved the intended result. The current model still operates without defined objectives, which will ultimately make it difficult to assess the court's effectiveness.

### Why have specialist FDV courts?

Recognition of the shortcomings of the legal system's response to FDV has led justice agencies to propose alternative methods to deal with the issue. Specialist FDV courts recognise the significant differences between FDV and other forms of violence.<sup>534</sup> They can attempt to address the underlying causes of offending behaviour while incorporating the community's goals in responding to FDV—namely, holding the offender accountable and keeping the victim safe.<sup>535</sup> Specialist FDV courts may also reduce the trauma and ongoing victimisation that FDV survivors and witnesses experience in the court system.<sup>536</sup>

Specialist FDV courts have a number of common features:

- Specialist police units and/or policies
- specialist dedicated personnel, including judicial officers, prosecutors, defence lawyers, victim support workers and community corrections officers

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534 Law Reform Commission of Western Australia, *Court Intervention Programs: Final Report*, Project No. 96, Government of Western Australia, June 2009, p. 90.

535 Law Reform Commission of Western Australia, *Court Intervention Programs: Consultation Paper*, Project No. 96, Government of Western Australia, June 2008, p. 129.

536 Submission 33, A/Commissioner for Victims of Crime, p. 2.

- arrangements for victim safety—for example, separate waiting areas for victims and use of screens, remote rooms or closed circuit televisions to assist victims to observe court proceedings or give evidence.
- arrangements for victim support, both in and outside court—information about the legal process, legal aid and legal representation; advice about outcomes; and referral to other agencies, such as refuges, housing services and counselling
- perpetrator behaviour change programs (BCPs)
- judicial monitoring and supervision of perpetrators while they participate in a program, and case management
- interagency cooperation at strategic and/or operational levels, and case management.<sup>537</sup>

### **Western Australia's first Family Violence Court model**

The first specialist FDV court model that operated in Western Australia was the Family Violence Court (FVC). This began as a pilot program in Joondalup in 1999 and was subsequently rolled out across metropolitan locations.

The Joondalup pilot 'led the country'<sup>538</sup> and was considered to be the 'Rolls Royce model'<sup>539</sup> as it had all the features and heard both civil applications for Violence Restraining Orders and FDV criminal matters where the accused pleaded guilty. As the model was rolled out to other metropolitan locations, it was pared back to criminal matters only. However, the FVC model still had the most features of any specialist FDV court in Australia, except for the (then) Victorian model.<sup>540</sup>

An evaluation of FVCs in 2014 found that although they stood up well in comparison to established good practice models, by comparison to mainstream courts the FVCs had

- a significantly higher unit cost, and
- less effective results in terms of re-offending.

The evaluation recommended that utilising mainstream courts in conjunction with a case-managed BCP would be less expensive and more effective.<sup>541</sup>

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537 Law Reform Commission of Western Australia, *Court Intervention Programs: Consultation Paper*, Project No. 96, Government of Western Australia, June 2008, pp. 130–131.

538 Ms Kedy Kristal, Women's Council for Domestic and Family Violence Services, *Transcript of Evidence*, 27 November 2019, p. 8.

539 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 3.

540 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Volume 1*, ALRC Report 114 and NSWLRC Report 128, Australian Government, Sydney, October 2010, p. 1500.

541 Department of the Attorney General, *Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court*, Western Australia, December 2014, p. 13.

The Committee was surprised to hear evidence that the MCWA did not have the opportunity to examine the data behind, or offer comment on, the draft 2014 evaluation.<sup>542</sup> The Committee considers this to be a highly unsatisfactory outcome.

### Current Family Violence List model

Following the evaluation, the Attorney General announced that a new model would be developed.<sup>543</sup> The FV List model was developed by a Family Violence Operational Steering Committee convened by the Department of Justice, comprising key stakeholders and chaired by the Chief Magistrate.<sup>544</sup> The model was piloted in Fremantle in January 2016 and rolled out across metropolitan locations by December 2017. The pilot was not formally evaluated 'because it did not go for long enough', however, 'the subjective view was that it was working and should be rolled out.'<sup>545</sup>

The FV List only deals with criminal FDV matters. Its features include:

- Western Australia Police Force (Police) prosecutions directly list the matter in the FV List.
- The number of matters in each FV List can be altered, in response to trends and volumes, and in consultation with the presiding magistrate.
- Before each first appearance, the Family Violence Service (FVS) sends information to the victim and offers support services.
- Key stakeholders share risk relevant information to ensure that risk to the victim is appropriately managed and other service delivery areas are aware of case issues or circumstances.
- The FV List magistrate can request a risk assessment report which provides information about the victim—in most cases, this is done when considering bail.
- If the accused pleads guilty, the FV List magistrate can monitor the matter for up to six months prior to final sentencing. Usually the offender attends a BCP in this period.
- The FV List magistrate may request a pre-sentence report prior to determining whether to monitor the matter and require attendance at a BCP, and prior to final sentencing.<sup>546</sup>

The FV List model has not been evaluated since its introduction. The Department of Justice expects that an evaluation will commence in 2021, at which time the indicators of success will be confirmed.<sup>547</sup> It is concerning that the FV List model has been operating since 2016 without any indication of how its performance will be eventually be measured, particularly given that it was implemented to replace a model that was deemed 'unsuccessful'.

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542 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2.

543 Amanda Banks, 'Special domestic violence court axed', *The West Australian* (web-based), 23 January 2015, accessed 31 July 2020, <<https://thewest.com.au/news/australia/special-domestic-violence-court-axed-ng-ya-384133>>.

544 Submission 32, Department of Justice, p. 5.

545 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 3.

546 Submission 32, Department of Justice, pp. 5–6.

547 Submission 32A, Department of Justice, p. 2.

## What has the shift in models achieved?

It has been difficult for the Committee to ascertain what the shift in models has achieved, not least because there has been no evaluation of the FV List. It also seems that some of the problems identified with the original FVC model have not been resolved by the shift to the FV List model, or were misconstrued.

### There has been no reduction in unit cost

Given the 2014 evaluation's findings about the FVC's unit costs as compared to mainstream courts, there was undoubtedly a financial element in the decision to shift to the FV List model. However, the Department of Justice stated that there has been no unit cost reduction achieved by the shift to the FV List model.<sup>548</sup>

### Recidivism is not necessarily a good measure of success

Conceptual problems with the FVC evaluation will make it difficult to measure any improvement in recidivism under the FV List model. The FVC evaluation was criticised for placing undue emphasis on recidivism as an indicator of success.<sup>549</sup> Problems with using recidivism as a measurement of success are that it:

- falls back on an understanding of FDV as 'incident-based' rather than 'pattern-based'
- ignores potential positive effects in both the lives of participants and those connected to them, including the fact that increased recidivism may actually indicate greater scrutiny of the offender and/or increased confidence by the victim in reporting offending behaviour.<sup>550</sup>

The intensive nature of the FVC program also tended towards a cohort of serious offenders at risk of imprisonment, often with concurrent problems such as alcohol and drug abuse, and with a high probability of failure. The evaluation did not take the specific characteristics and challenges of this difficult cohort of offenders into account.<sup>551</sup>

### Victims were well supported under the Family Violence Court model

A further criticism of the FVC model was that it focussed more on offenders than victims.<sup>552</sup> The shift was supposed to increase the focus on victims and offer more support from the

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548 Submission 32A, Department of Justice, p. 2.

549 Amanda Banks, 'Special domestic violence court axed', *The West Australian* (web-based), 23 January 2015, accessed 31 July 2020, <<https://thewest.com.au/news/australia/special-domestic-violence-court-axed-ng-ya-384133>>; Centre for Innovative Justice, *Beyond 'getting him to a program': Towards Best Practice for Perpetrator Accountability in the Specialist Family Violence Court context*, RMIT University, Melbourne, April 2018, p. 19.

550 Centre for Innovative Justice, *Beyond 'getting him to a program': Towards Best Practice for Perpetrator Accountability in the Specialist Family Violence Court context*, RMIT University, Melbourne, April 2018, p. 67.

551 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2.

552 The Hon. Michael Mischin MLC, Attorney General, *New era for dealing with family violence in courts*, media statement, 24 June 2015; Ms Caroline Hannington, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 3.

FVS.<sup>553</sup> However, qualitative evidence in the FVC evaluation showed that victims were very well supported. An extensive victim satisfaction survey reported overwhelmingly positive feedback:

Overall, when asked to provide comments regarding their experience of the services, the vast majority of the comments were positive (971 [which is] 97% [of all comments]), noting that the service was ‘outstanding’ and the staff ‘helpful, competent and friendly’, as well as ‘supportive, understanding and sympathetic’. Respondents described the assistance they received as ‘encouraging and respectful’ and said that it made them feel ‘safe, reassured’ and they were ‘very grateful’. They related that they felt they were provided good advice, and that staff were informative and knowledgeable. Services were regarded as good, prompt and appropriate to their situation.<sup>554</sup>

#### **Finding 62**

The justifications for the shift from the Family Violence Court model to the Family Violence List model have not been fully explained.

#### **Some features of the Family Violence List show improvement**

The process of Police prosecutions directly listing FDV matters in the FV List from their first appearance is a clear improvement. Previously, matters were listed in general court lists, then identified as FDV matters and referred to the FVC if the offender intended to plead guilty and was prepared to go.<sup>555</sup> This was inefficient, as it added an extra court appearance. However, there is still further scope to improve this process, as the Committee received evidence that it is not formalised and can therefore ‘wax and wane’.<sup>556</sup>

The Department of Justice stated that information sharing is better under the FV List model because of the pre-court meeting.<sup>557</sup> Encouragingly, the Department of Communities also noted that their staff have a perception that information sharing has improved under the FV List model.<sup>558</sup>

The availability of risk assessment reports, particularly when considering bail, is another key advantage of the FV List model.<sup>559</sup>

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553 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2.

554 Department of the Attorney General, *Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court*, Western Australia, December 2014, p. 14.

555 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 3.

556 Submission 23, The Magistrates’ Society of Western Australia, p. 10.

557 Ms Teresa Tagliaferri, Department of Justice, *Transcript of Evidence*, 13 November 2019, p. 2.

558 Ms Tanya Elson, Department of Communities, *Transcript of Evidence*, 10 February 2020, p. 5.

559 Submission 10, Chief Magistrate of Western Australia, p. 10.

### **Western Australia's specialist family and domestic violence courts need clear objectives to realise benefits**

The Committee considers that the changes to the specialist FDV court model over time have been haphazard and have suffered from a lack of clear vision about the model's objectives. Until there are clearly defined objectives for the specialist FDV court, changes will be *ad hoc*, without clear foundation, and will likely fail to realise the benefits that could be achieved.

The Committee looks forward to the 2021 evaluation of the FV List, but notes that it will be difficult to assess the court's true effectiveness without having set the benchmarks against which its success will be measured. The Committee recommends that the evaluation is used as an opportunity to set objectives, identify indicators for success, and establish a clear framework to guide the FV List's operations into the future. It is only once these have been developed that the potential benefits of this model can be truly realised.

#### **Finding 63**

Specialist family and domestic violence courts in Western Australia have suffered from a long-standing lack of clear objectives, which has limited the ability to measure their true effectiveness.

#### **Recommendation 53**

That the Attorney General ensures that clear objectives, performance indicators and a framework for implementation and evaluation are developed for the Family Violence List. These details should be included in the Department of Justice's annual report.

## Chapter 10

# Existing capabilities in specialist list criminal proceedings involving family and domestic violence should be expanded

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### **The Magistrates Court of Western Australia can improve its management of criminal matters involving family violence**

The Magistrates Court of Western Australia (MCWA) deals with a broad range of criminal matters involving family and domestic violence, including breach of Police Orders and Family Violence Restraining Orders (FVROs), and assaults. The management of these matters is highly dependent on the resources available in each court location, including judicial resources, support services and physical court capacity.

Most metropolitan courts operate a Family Violence List (FV List) to deal with FDV criminal matters on a designated day each week or fortnight, with a dedicated family violence magistrate presiding. However, the FV Lists only deal with a ‘mere portion’ of matters involving FDV, as they do not operate outside the metropolitan area and not all FDV matters are directly listed in the FV List.<sup>560</sup> Regional courts and the Children’s Court of Western Australia do not have dedicated FV Lists and deal with FDV criminal matters as part of their general lists.

This chapter discusses some of the issues identified with the management of FDV criminal matters at the various stages of the court process. Some of these issues are unique to the FV List, while others are applicable in both the FV List and mainstream criminal courts.

### **Court-based Case Management and Information Sharing**

Case management and information sharing are major features of the FV List model. This enables the FV List team—the magistrate, Western Australia Police Force (Police) prosecutions, Community Corrections and the Family Violence Service—to accurately assess risk, make informed decisions and manage FDV matters in an integrated manner. When done effectively, case management and information sharing can significantly improve a family’s experience in the court system by providing ongoing support and minimising duplication.<sup>561</sup>

The main forum for case management and information sharing is the pre-court meeting, at which the FV List team shares relevant information to ensure that risk and family safety is appropriately managed. The team also receives information to assist with case management

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<sup>560</sup> Submission 23, The Magistrates’ Society of Western Australia, p. 10.

<sup>561</sup> Submission 33, A/Commissioner for Victims of Crime, p. 4.

from other key non-court stakeholders, including non-government support agencies, behaviour change program (BCP) providers and the Department of Communities.<sup>562</sup>

### **Inadequate resourcing compromises effective case management**

The FV List operates with limited additional judicial resources. The Chief Magistrate gave evidence that additional judicial resources were allocated to the FV List to be shared across the metropolitan area. However, even more judicial resources have had to be relocated from Perth to alleviate pressure in the general lists—‘the disadvantage of that was that the clearly identified [FV List] resource tended to get merged into the general list.’<sup>563</sup> This merging has meant that in most locations, FV List case management depends entirely on the limited capacity of local magistrates to commit to doing so.<sup>564</sup>

Effective case management is time consuming and resource intensive, both in preparation and in court. Courts cannot do justice to FDV-affected families and achieve outcomes that improve safety if they cannot devote sufficient time to case management.<sup>565</sup>

The Committee made recommendations regarding the need for additional judicial resources in Chapter 3. Any consideration of increasing resources must take into account the need for FV List magistrates to devote sufficient time to case management.

#### **Finding 64**

Although case management is an important part of the Family Violence List in the Magistrates Court of Western Australia, magistrates are inadequately resourced to undertake it.

### **There is no formalised framework to define the Family Violence List’s objectives or guide operational procedures**

The FV List operates without any genuine framework or formal guidelines. This is in stark comparison to the MCWA’s other specialist courts, the Drug Court and the Start Court (mental health support and diversion). These are both governed by extensive guidelines that detail their goals, target participants, operating processes and procedures and team member roles.<sup>566</sup> Developing a formal framework for the FV List would clarify its objectives and operational procedures for victims, offenders and the community.

An FV List framework or guidelines could also address some of the operational procedures that have been identified as problematic—for example, the discussion of risk-sensitive information in FV List pre-court meetings. The benefit of this is that it allows for a frank discussion and the victim’s concerns can be brought to the court’s attention in a forum that

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562 Submission 23, The Magistrates’ Society of Western Australia, pp. 9–10; Submission 32, Department of Justice, p. 5.

563 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 3.

564 Submission 23, The Magistrates’ Society of Western Australia, pp. 9, 11.

565 Magistrates’ Court of Victoria, *Briefing*, 26 February 2020.

566 Department of Justice, *Perth Drug Court Guidelines*, Western Australia, 2018; Department of Justice, North Metropolitan Health Service and Mental Health Commission, *Start Court Guidelines*, Western Australia, May 2019.



does not expose them to additional risk. However, this information can also be prejudicial to an accused person or offender and it is against the principles of natural justice that it is discussed outside of open court.<sup>567</sup> Formal FV List guidelines could address these competing considerations and clarify that the procedures of the court will prioritise victim safety.

#### **Finding 65**

The Magistrates Court of Western Australia's Family Violence List operates without a formal framework or guidelines.

#### **Recommendation 54**

That the Attorney General ensures that the Department of Justice consults with the Chief Magistrate to develop a formal framework for the Family Violence List that clearly defines its objectives and operational procedures.

### **The use of Bail Risk Assessment reports should be expanded**

A particularly relevant factor for magistrates considering bail in FDV matters is the likely risk that the accused poses to the victim. Bail Risk Assessment reports are useful in this process, as they contain information from key agencies and the victim about the risk posed by the accused. The availability of Bail Risk Assessment reports is one of the main benefits of the FV List.<sup>568</sup>

However, these reports are only available for FV List matters. Many FDV-related criminal matters are not heard in an FV List, meaning many magistrates are not able to access this valuable tool to consider in determining bail. Further, the FV List only operates at certain metropolitan courts, meaning that magistrates and FDV victims in all regional areas are also unable to access the reports.

In 2014, the Law Reform Commission of Western Australia (LRCWA) recognised Bail Risk Assessment reports as 'vital in terms of enhancing decision making and maximising victim safety'. It recommended that funding be provided to enable them to be prepared in all FDV-related offences unless the accused did not object to the imposition of full protective bail conditions. It also recommended that the use and effectiveness of Bail Risk Assessment reports be monitored on an ongoing basis.<sup>569</sup>

This recommendation should be implemented to allow Bail Risk Assessment reports to be accessed by all magistrates considering bail in FDV criminal matters, not just those in the FV List.

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567 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 7.

568 Submission 10, Chief Magistrate of Western Australia, p. 5.

569 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 49, p. 137.

**Finding 66**

The limited availability of Bail Risk Assessment reports creates a disadvantage for magistrates dealing with family and domestic violence offences outside the Family Violence List.

**Recommendation 55**

That the Attorney General ensures that sufficient funding is provided to the Family Violence Service to make Bail Risk Assessment reports available expeditiously in all metropolitan and regional locations, as recommended by the Law Reform Commission of Western Australia.

**Legislative guidance is required to clarify the use of Bail Risk Assessment reports**

Usage of the information contained in a Bail Risk Assessment report can be problematic. The report may contain information from or about the FDV victim which, if the accused was made aware of it, could increase risk to the victim. However, not allowing the accused to access the information being considered by the court is at odds with principles of natural justice and transparency. These principles suggest that an accused should be made aware of any information that the court considers as part of its decision in relation to bail and be given an opportunity to respond. In practice, magistrates are likely to err on the side of caution and not disclose information that could potentially endanger a victim.<sup>570</sup> However, no formal process is available to guide such consideration.

The Committee considers that the MCWA would benefit from legislation clarifying the use of Bail Risk Assessment reports and allowing for judicial discretion in relation to non-disclosure of such information.<sup>571</sup>

**Finding 67**

There is a need to legislatively clarify the appropriate and lawful use of sensitive information contained in Bail Risk Assessment reports.

**Recommendation 56**

That the Attorney General reviews the *Bail Act 1982* with a view to introducing amendments to clarify the use of Bail Risk Assessment reports, particularly where they contain information that may compromise a person's safety.

**Lack of conditional bail programs is a missed opportunity for productive intervention**

The Magistrates' Society of Western Australia described the current bail conditions regime as 'unproductive, highly litigious and limited.'<sup>572</sup> Currently, there are very few tools available to deliver immediate rehabilitative intervention and support in the early stage of an FDV

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570 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, pp. 7–8.

571 Submission 10, Chief Magistrate of Western Australia, p. 5.

572 Submission 23, The Magistrates' Society of Western Australia, p. 14.

matter, yet this is when survivors frequently request this type of intervention. However, the opportunity for intervention only comes months later, when an accused is convicted of an FDV offence, and when an appropriate program becomes available.<sup>573</sup>

Early intervention tools exist in relation to other behaviours that can influence criminal offending. For example, imposing a urinalysis requirement on a bailed accused struggling with illicit substance use allows for a productive early intervention while still preserving the accused person's rights to seek legal advice and plead not guilty.<sup>574</sup>

Making FDV programs available to people whilst on bail would be a significant improvement in resource allocation, and free up capacity to focus on more high-risk intensive needs cases. Further, effective early intervention may lead to increased acceptance of responsibility and a reduction in contested charges.<sup>575</sup>

#### **Finding 68**

Conditional bail programs should be available for people accused of family and domestic violence offences, as they can offer a valuable opportunity for early intervention.

#### **Recommendation 57**

That the Attorney General directs the Department of Justice to conduct scoping for conditional bail programs for people accused of family and domestic violence offences.

### **Increasing the probability of conviction**

The Committee received evidence suggesting reforms that could increase the probability of conviction in FDV offences. The Committee considered these not because increasing rates of conviction is a singular goal of the criminal process. Rather, it is because certain aspects of the criminal process, such as delay and the high incidence of victim withdrawal, are widely acknowledged as having an adverse effect on FDV conviction rates. Both of these factors are inevitable to some extent and an accused may seek to use them to their advantage in an attempt to avoid conviction. An effective justice system should seek to introduce pragmatic reforms to minimise this adverse and potentially unjust impact on conviction rates.

#### **Pre-recorded video statements may increase the probability of conviction**

In other Australian jurisdictions, pre-recorded video statements from FDV victims, taken at the crime scene or police station, have been made admissible as evidence in chief.<sup>576</sup> There are at least four mechanisms by which a pre-recorded video statement may increase the probability of conviction:

- It may provide prosecutors with additional leverage during plea negotiations.

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573 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 10.

574 Submission 23, The Magistrates' Society of Western Australia, p. 14.

575 *ibid.*, pp. 13–14.

576 For example: *Criminal Procedure Act 1989*, (NSW), s. 356.

- It may strengthen the prosecution's case by graphically depicting the victim's demeanour and experience at a time proximate to the alleged offence.
- The opportunity to view the statement immediately prior to cross-examination may improve the accuracy and credibility of the victim's testimony.
- It may reduce the capacity for the accused to intimidate the victim into changing or recanting their evidence.<sup>577</sup>

In Western Australia, the 'best evidence' that can be offered is the handwritten family violence statement taken by Police at the time of attending an alleged FDV incident, although it is not always possible in the circumstances of the case to obtain this. In some instances, an incident may also be captured on an officer's body-worn camera, although this is not necessarily admissible evidence.<sup>578</sup>

Research conducted in New South Wales in 2019 concluded that although the presence of a pre-recorded FDV victim statement had no impact on the probability of a guilty plea, it did increase the probability of conviction. In cases that proceeded to a defended hearing, the probability of conviction was increased by 24.5%.<sup>579</sup> These results contradicted the findings of a 2017 evaluation that found there was limited evidence to indicate that the presence of a pre-recorded FDV victim statement had a significant impact on the probability of a guilty plea, the time to finalisation for matters resulting in a guilty plea or on the probability of conviction.<sup>580</sup> Given these outcomes, the Committee considers this matter should be considered further.

#### **Finding 69**

Making pre-recorded video statements taken from family and domestic violence victims admissible during criminal proceedings may increase the probability of conviction.

#### **Recommendation 58**

That the Attorney General urgently explores introducing reforms to allow family and domestic violence victims to provide testimony through the use of a pre-recorded video statement with Western Australia Police Force, similar to the 'Domestic Violence Evidence in Chief' reforms introduced in New South Wales.

### **No contest pleas are not a suitable reform for Western Australia**

Introducing an alternative plea of 'no contest' has been suggested as a pragmatic innovation that may mitigate the effect of victim withdrawal. This plea, which does not operate in any

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577 Steve Yeong and Suzanne Poynton, 'Can Pre-Recorded Evidence Raise Conviction Rates in Cases of Domestic Violence?', *Life Course Centre Working Paper Series*, no. 2019–18, August 2019, p. 5.

578 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, pp. 2–3.

579 Steve Yeong and Suzanne Poynton, 'Can Pre-Recorded Evidence Raise Conviction Rates in Cases of Domestic Violence?', *Life Course Centre Working Paper Series*, no. 2019–18, August 2019, p. 19.

580 Steve Yeong and Suzanne Poynton, 'Evaluation of the 2015 Domestic Violence Evidence-in-Chief (DVEC) reforms', *NSW Bureau of Crime Statistics and Research: Crime and Justice Bulletin*, no. 206, September 2017, p. 12.

Australian jurisdiction,<sup>581</sup> removes the concept of ‘guilt’ but has the same basic effect as a guilty plea. It is an acceptance of the prosecution’s case, a conviction is recorded and all sentencing dispositions are available to the court.

The benefit of a ‘no contest’ plea lies in its potential as a ‘circuit breaker’ for an accused who requires therapeutic intervention but is resistant to the concept of guilt.<sup>582</sup> Currently, such an accused will plead not guilty by default and significant resources will be devoted to pursuing a prosecution that may not succeed. The nomenclature of a ‘no contest’ plea removes the stigma of ‘guilty’ while still presenting the option to engage a perpetrator in productive intervention. A similar change in nomenclature is attributable to the increased acceptance of conduct agreement orders by respondents in FVRO applications.<sup>583</sup>

One concern over introducing a ‘no contest’ plea is that it may not provide sufficient evidence of FDV, and may therefore prejudice the victim in other legal proceedings.<sup>584</sup> A pilot program in FDV matters could assess its impact upon rates of conviction, acceptance of responsibility and uptake of therapeutic programs.<sup>585</sup> Ultimately, the Committee is not persuaded that it is an appropriate reform in Western Australia.

## **The relevance of victim consent in Family Violence Restraining Order breach offences**

No Australian jurisdiction allows for a defence of consent to breaching a restraining order. The defence was removed in Western Australia in 2004. Further amendments in 2011 provided that the protected person aiding the breach of the restraining order is not a mitigating factor for sentencing.<sup>586</sup> Despite this, the issue remains and is a source of frustration for magistrates.<sup>587</sup>

Opinion remains divided on whether legislation should prohibit a court from considering victim consent as a mitigating factor in sentencing.<sup>588</sup> On one hand, ordinary sentencing principles and considerations of fairness dictate that judicial discretion should remain unfettered to consider all the relevant circumstances of a case.<sup>589</sup> In this regard, a victim’s genuine consent is relevant to the facts of the breach offence and assessing its overall seriousness.<sup>590</sup> On the other hand, true consent is difficult to identify within the dynamics of

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581 Sydney Criminal Lawyers, *Can I plead guilty if I am innocent?*, 9 January 2017, accessed 12 June 2020, <<https://www.sydneycriminallawyers.com.au/blog/can-i-plead-guilty-if-i-am-innocent/>>.

582 Submission 23, The Magistrates’ Society of Western Australia, p. 12.

583 Magistrate Deen Potter, The Magistrates’ Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 10.

584 Ms Kedy Kristal, Women’s Council for Domestic and Family Violence Services, *Transcript of Evidence*, 27 November 2019, p. 6.

585 Submission 23, The Magistrates’ Society of Western Australia, p. 13.

586 *Restraining Orders Act 1997*, (WA), s. 61B.

587 Magistrate Deen Potter, Magistrates Court of Western Australia, *Briefing*, 30 October 2019; Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 9.

588 For a full discussion of the competing arguments, see Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Volume 1*, ALRC Report 114 and NSWLRC Report 128, Australian Government, Sydney, October 2010, p. 526.

589 Magistrate Deen Potter, Magistrates Court of Western Australia, *Briefing*, 30 October 2019.

590 Submission 10A, Chief Magistrate of Western Australia, p. 4.

coercion and control that characterise many FDV relationships. Family, community and cultural influences can add further complexity.<sup>591</sup>

In 2014, the Law Reform Commission of Western Australia (LRCWA) recommended that the *Restraining Orders Act 1997* be amended to provide that victim consent could be considered mitigating in certain circumstances, namely

...where the person protected by a family and domestic violence protection order or police order has actively invited or encouraged the person bound to breach ... (but only where there is no other conduct on the part of the person bound by the order that would amount to family and domestic violence).<sup>592</sup>

However, the Committee considers that protecting victims should prevail when weighing the competing arguments.<sup>593</sup> Any modification to the current position potentially exposes victims to risk, not least of which may be re-victimisation by creating yet another situation where they may be required to give evidence to establish the true extent of their consent.<sup>594</sup>

Existing provisions allow a court to vary or cancel an FVRO where it is satisfied that the protected person aided a breach.<sup>595</sup> These are sufficient to protect the interests of the bound person against any ongoing conduct by the protected person that is inconsistent with the intent of the FVRO.

The Committee therefore supports the position that the law should remain unchanged and victim consent should not be a mitigating factor in sentencing.

#### **Finding 70**

The current state of the law, which provides that the consent of the protected person to a breach of a Family Violence Restraining Order is not to be considered a mitigating factor in sentencing, is appropriate to protect the interests of victims of family and domestic violence.

### **Behaviour change programs for offenders**

As part of an increased focus on perpetrator accountability and rehabilitation, justice systems across Australia deliver perpetrator BCPs in an attempt to address the causes of FDV.<sup>596</sup> In Western Australia, an offender who pleads guilty in the FV List may elect to be considered for inclusion in a BCP. The court will assess the offender to determine their

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591 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 14.

592 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 38, p. 118.

593 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 10.

594 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 118.

595 *Restraining Orders Act 1997*, (WA), s. 61B(4).

596 Australia's National Research Organisation for Women's Safety, *Improving accountability: The role of perpetrator intervention systems—Key findings and future directions*, Sydney, 2020, p. 2.

suitability. Commencement is also dependent on the availability of places and the capacity of the program provider to intake new participants at that time.<sup>597</sup>

Current BCPs run over a 24-week period and are delivered by a non-government service provider. During the program, the offender will return to court regularly for Community Corrections to provide updates on progress and compliance prior to a final sentencing date. Victim support and liaison is also offered while the offender participates in the program. The offender's performance in the program may mitigate any sentence imposed.<sup>598</sup>

*'A focus needs to be taken on offenders taking responsibility and accepting accountability for their behaviour. This can be best achieved through the use of court ordered programs and case management.'*

*– Commissioner Chris Dawson,  
Western Australia Police Force*

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However, there are questions about the extent to which BCPs are effective and how they are delivered.

### **There is limited evidence on the effectiveness of programs**

The LRCWA considered BCPs as part of its inquiry into enhancing FDV laws. Its report noted that many stakeholders supported FDV perpetrators attending programs, however there was significant uncertainty as to program effectiveness. It also identified gaps in access to programs, particularly in remote Western Australia. The LRCWA recommended that the Western Australian Government review the availability and effectiveness of FDV BCPs across the state.<sup>599</sup> However, there has not been any evaluation of BCPs that offenders in the FV List are required to attend.<sup>600</sup>

The Committee agrees that it is imperative that current BCPs are evaluated and program availability audited. There is little evidence generally on the effectiveness of BCPs as they are difficult to evaluate and collecting the necessary data is both beyond the capability of many providers and outside the scope of their service agreement.<sup>601</sup> Without evaluation, there is a danger that resources are being wasted.<sup>602</sup>

Any evaluation must take into account the complexities of engaging offenders who are often highly resistant, have entrenched behaviours and concurrent issues that place them at high probability of 'failure'.<sup>603</sup> The National Outcome Standards for Perpetrator Interventions

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597 Submission 23, The Magistrates' Society of Western Australia, p. 10.

598 *ibid.*

599 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 52, p. 140.

600 Submission 10, Chief Magistrate of Western Australia, p. 4.

601 Mr Rodney West, Centrecare Inc., *Transcript of Evidence*, 11 March 2020, pp. 2–3.

602 Submission 10, Chief Magistrate of Western Australia, p. 4.

603 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2; Mr Rodney West, Centrecare Inc., *Transcript of Evidence*, 11 March 2020, pp. 1–2.



developed by the Council of Australian Governments include both output and outcome measures that should be evaluated.<sup>604</sup>

Despite this lack of evaluation, and until a comprehensive evaluation is undertaken, the Committee supports FDV perpetrators being required to attend BCPs as an important intervention and potential rehabilitation tool. Evidence received was overwhelmingly in favour of the ongoing use of BCPs as they offer many benefits as part of the justice system's response to FDV. For example:

- It is preferable that highly resistant offenders have some engagement with a support agency as it keeps them visible rather than 'pushed to the fringes'.
- Even limited engagement will give them some knowledge of where to access support in the future.
- Separate support staff make contact with partners and ex-partners.
- Given that many offenders present with multiple issues, BCPs are also a referral point for other support services.<sup>605</sup>

BCPs are not a 'silver bullet', but any opportunity to engage FDV perpetrators is valuable.

#### **Finding 71**

While behaviour change programs offer a valuable opportunity to engage and monitor perpetrators of family and domestic violence, there is limited evidence of their long-term effectiveness.

#### **Recommendation 59**

That the Attorney General and the Minister for Prevention of Family and Domestic Violence direct the Department of Justice and the Department of Communities to conduct independent evaluations of all government funded behaviour change programs to monitor their effectiveness. Such evaluations should be referenced in the respective Departments' annual reports, and made publicly available to inform public debate.

### **Structural and resourcing restrictions inhibit offender's access to programs**

Currently, offenders are only considered for inclusion in a BCP if their matter is dealt with in an FV List. This factor alone limits offenders' access. Even with this limitation, demand for programs is consistently high and generally exceeds capacity.<sup>606</sup>

Long waiting times for assessment (up to six weeks) and commencement, as well as the length of the program (24 weeks), are potential disincentives to offender participation.<sup>607</sup>

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604 Australia's National Research Organisation for Women's Safety, *Men's behaviour change programs: Measuring outcomes and improving program quality—Key findings and future directions*, Sydney, 2019, p. 2.

605 Mr Rodney West, Centrecare Inc., *Transcript of Evidence*, 11 March 2020, pp. 3–4; Australia's National Research Organisation for Women's Safety, *Men's behaviour change programs: Measuring outcomes and improving program quality—Key findings and future directions*, Sydney, 2019, p. 2.

606 Mr Rodney West, Centrecare Inc., *Transcript of Evidence*, 11 March 2020, p. 3.

607 Submission 23, The Magistrates' Society of Western Australia, p. 14; Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2.



This is particularly so for less serious offences where participation may not lead to a substantial reduction in sentence. As a result, there is a lost opportunity to capitalise on an offender's desire for therapeutic intervention.<sup>608</sup> Waiting times for commencement have been alleviated by switching to a rolling program with multiple entry points.<sup>609</sup>

There is no capacity for flexible programs that can be tailored to individual needs or the needs of certain cohorts of offenders—for example, 'fly-in, fly-out' workers and people with significant mental illness.<sup>610</sup> Given the importance of early intervention, it is particularly concerning that there is no BCP available for children who are FDV perpetrators.<sup>611</sup>

#### **Finding 72**

Access to behaviour change programs for many perpetrators of family and domestic violence is currently limited due to lack of availability and lack of flexibility. This issue is exacerbated in regional and remote Western Australia.

#### **Recommendation 60**

That the Attorney General directs the Department of Justice to commence scoping for more flexible programs that can cater for specific cohorts of perpetrators, especially children and young people. Further, the Attorney General must ensure sufficient funding for an expanded range of behaviour change programs for specific cohorts of perpetrators, especially children and young people.

### **Aboriginal offenders**

The first and only Aboriginal FDV criminal court in Western Australia is the Barndimalgu Aboriginal Family Violence Court (Barndimalgu Court) in Geraldton. It commenced operation in 2007 as one of a number of strategies to reduce Aboriginal imprisonment. The location was chosen as the Gordon Inquiry identified the Midwest region as having high rates of unreported FDV in the Aboriginal community and high rates of Aboriginal imprisonment due to FDV.<sup>612</sup>

The Barndimalgu Court provides a culturally appropriate court-based model and program for Aboriginal offenders to address the underlying issues that may lead to their offending.<sup>613</sup>

Unique features include:

- The court is not convened in a standard courtroom.
- The magistrate is assisted by two respected Aboriginal community members in the sentencing process.

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608 Submission 23, The Magistrates' Society of Western Australia, p. 14; Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 2.

609 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, pp. 2–3.

610 Submission 23, The Magistrates' Society of Western Australia, p. 14; Closed submission.

611 Submission 29, Magistrate Andrée Horrigan, p. 3.

612 Submission 32, Department of Justice, p. 7; See also Sue Gordon, Kay Hallahan and Darrell Henry, *Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Government of Western Australia, 2002.

613 Submission 32, Department of Justice, pp. 6–7.

- Offenders are placed on conditional bail for four to six months and reappear before the court each fortnight.
- Offenders are required to undergo a culturally relevant FDV program ('Not Our Way'), as well as other programs to address behaviours contributing to their offending.
- A dedicated Family Violence Officer assists and supports victims, prepares Victim Impact Statements and provides a voice for the victim in case management meetings.<sup>614</sup>

The Barndimalgu Court was evaluated by the then Department of the Attorney General in 2014. It concluded that the likelihood of participants re-offending was not significantly different to that in mainstream courts, although analysis suggested that participation in a case-managed offender BCP was beneficial. Victims generally reported that they were satisfied with the court program and that their views were respected, although a wide spectrum of outcomes was reported in relation to their ongoing safety.<sup>615</sup>

The Committee received positive evidence about the effectiveness of the Barndimalgu Court during the course of its inquiry. Unfortunately, the Committee's planned visit to the court in April 2020 was cancelled due to COVID-19 restrictions. The Committee thus looks forward to the independent external evaluation of the Barndimalgu Court due to commence by the end of 2020.<sup>616</sup> The Committee anticipates the evaluation will confirm anecdotal evidence of the court's positive outcomes, and will be used as a basis to improve culturally safe court responses to FDV in Aboriginal communities.

#### **Finding 73**

The Barndimalgu Aboriginal Family Violence Court shows encouraging signs of producing positive outcomes for Aboriginal people affected by family and domestic violence.

#### **Recommendation 61**

That the Attorney General prioritises the evaluation of the Barndimalgu Aboriginal Family Violence Court and uses the findings of the evaluation as a basis to improve and expand culturally and linguistically appropriate court responses for Aboriginal people.

#### **Barndimalgu Court's structure enables intensive case management**

One of the strengths of the Barndimalgu Court is that it is well supported and resourced, with a clear operational framework and defined objectives. It has a 0.5 FTE dedicated judicial resource which allows the magistrate to focus on intensive case management. Unfortunately, this resource was reallocated from Joondalup court, which is subsequently only able to operate their FV List once a fortnight.<sup>617</sup>

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614 Submission 10, Chief Magistrate of Western Australia, p. 7; Submission 32, Department of Justice, pp. 6–7.

615 Department of the Attorney General, *Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court*, Western Australia, December 2014, pp. 13–15.

616 Ms Joanne Stampalia, Department of Justice, *Transcript of Evidence*, 13 November 2019, pp. 4–5.

617 Submission 23, The Magistrates' Society of Western Australia, p. 11.

**Aboriginal court programs must be created with involvement from the communities they serve**

The cultural and historical reasons for the reluctance of many Aboriginal people to engage with the justice system are well established. The Committee received consistent evidence that Aboriginal people should be involved in decision making at every stage of building programs.<sup>618</sup> This is the only way to create truly culturally safe spaces and foster trust. The Committee was particularly impressed by the ongoing operation of the Koori Court in Victoria and the significant body of work arising from the recommendations of Victoria's Royal Commission into Family Violence regarding FDV in Aboriginal communities.<sup>619</sup>

It is appropriate that local Aboriginal communities were involved in the establishment of the Barndimalgu Court via the local Aboriginal Reference Group, and continue to be involved with elders advising the magistrate on cultural aspects.<sup>620</sup> The Committee also received encouraging evidence regarding the Martu 'card system' that was developed to improve understanding of Police Orders, protective bail conditions and restraining orders. This entirely community-led initiative has helped overcome some of the disadvantages faced by Aboriginal people in the justice system.<sup>621</sup>

Given the prevalence and impact of FDV in Aboriginal communities and the persistent overrepresentation of Aboriginal people in Western Australia's prisons, the Committee is strongly of the view that more can be done to improve justice outcomes for Aboriginal people experiencing FDV. The Committee supports greater Aboriginal leadership and decision making in any future expansion of Aboriginal FDV court programs.

**Finding 74**

Aboriginal community-led court programs are better placed to overcome the disadvantages faced by Aboriginal people in the justice system and produce positive outcomes for people affected by family and domestic violence.

**Recommendation 62**

That the Attorney General prioritises the expansion of Aboriginal community-led court programs to respond to family and domestic violence, particularly in regional and remote areas, and ensures funding for the development and implementation of these programs.

618 Ms Mary Martin, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 11; Magistrates' Court of Victoria, *Briefing*, 26 February 2020; Ms Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 3.

619 Royal Commission into Family Violence, *Report and recommendations: Volume V*, Victorian Government, March 2016, Recommendations 149 and 150, p. 55.

620 Submission 32, Department of Justice, p. 7.

621 Submission 33, A/Commissioner for Victims of Crime, p. 4.



# Chapter 11

## Breaking down jurisdictional silos

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### Family and domestic violence crosses multiple legal jurisdictions

Family and domestic violence can result in the affected parties interacting with multiple jurisdictions within the court system. If the FDV occurs within the context of a family with children, the victim may apply for a Family Violence Restraining Order (FVRO) in the Magistrates Court of Western Australia's (MCWA) civil jurisdiction, and the perpetrator may be charged with a crime and appear in the MCWA's criminal jurisdiction. Further, the victim and perpetrator may end their relationship, resulting in proceedings in the Family Court of Western Australia (FCWA) to make parenting orders and distribute assets. In some cases, there may be child protection proceedings or an FVRO may be sought in the Children's Court of Western Australia (CCWA), adding a further layer of complexity.

Concurrent proceedings create challenges for courts, FDV survivors and perpetrators.<sup>622</sup> Concurrent proceedings contribute to duplication for both parties and courts in terms of providing and receiving evidence, and court processes. Limited information sharing between courts means that FDV survivors must repeat their story in each separate matter, potentially contributing to re-traumatisation. There is also the risk that each jurisdiction may not have access to all of the relevant evidence, which can affect decision making and lead to seemingly inconsistent outcomes. FVRO and family orders may contain different conditions making it difficult for those bound to know what they can and cannot do, and for Western Australia Police Force (Police) officers in enforcing FVROs. Differences in duty lawyer availability and legal aid grant eligibility may mean that parties have legal representation in one jurisdiction but not another, or different legal representation in different jurisdictions. All of this can be confusing, time consuming and frustrating for all those involved.

Proceedings or outcomes in one matter, may affect others in different jurisdictions. For example, criminal proceedings or FVRO proceedings may be used as evidence in a matter before the FCWA. If there are delays in the finalisation of the criminal matter or the FVRO, proceedings in the FCWA may also be delayed.

This chapter canvasses a number of jurisdiction integration options that could reduce the risks, duplication and inconsistencies to provide a more efficient court system.

The Committee notes that the Department of Justice undertook a review of *Integrated Responses to Family and Domestic Violence* in 2015. The review followed the 2014 evaluation of the Family Violence Court and outlined 'a new integrated approach to responding to family violence cases in Magistrates Courts.'<sup>623</sup> The Committee requested a

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622 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 161.

623 Submission 38, Legal Aid Western Australia, p. 7, quoting the *Integrated Justice Responses to Family and Domestic Violence* document, Department of Justice, 2015.

copy of this review but was informed that the ‘proposal’ document arising from this review could not be provided as it was prepared for the purpose of a possible cabinet submission.<sup>624</sup> The Committee has therefore been unable to refer to this review and its outcomes in considering possible jurisdiction integration options.

## One family, one magistrate

The Committee took evidence that the best approach for dealing with justice issues arising from FDV is to have a single decision maker presiding over all matters arising from one set of circumstances or within one family.<sup>625</sup> In this approach, parties would not need to repeat similar evidence in different jurisdictions to different decision makers. There would be fewer opportunities for information to be missed and things to fall through the gaps.<sup>626</sup> A single decision maker would have access to all of the evidence, enabling consistent decision making across matters in different jurisdictions.

Victoria’s specialist Family Violence Courts Division are the most integrated model in the country (see Box 11.1). It is considered the ‘gold standard’ by many, providing the ‘benchmark’ for justice system responses to FDV.<sup>627</sup>

### Box 11.1: Victoria’s Family Violence Courts Division

The Magistrates’ Court of Victoria’s specialist Family Violence Court model is the most integrated in Australia. Magistrates can potentially exercise multiple jurisdiction relating to a FDV incident. This includes child protection matters; Family Violence Intervention Order applications; summary criminal charges; Victims of Crime Assistance Tribunal applications; non-contested family law matters; coronial investigations, and general civil claims.

There is a presumption that matters will be dealt with by a specialist family violence court unless some other criteria are met. There is also a presumption of “one magistrate, one family”, where related matters are heard together even where a significant period of time elapses between appearances or incidents. This safeguards the therapeutic process and ensures accountability.

Information sharing is critical to improving outcomes for families. The Magistrates’ Court of Victoria has the ability to directly request copies of orders from the Family Court of Australia. This enables orders to be clearly explained and helps minimise inconsistency. Information sharing protocols exist where matters need to be transferred to another jurisdiction.

The Victorian model recognises that the court cannot do justice to a family and provide an outcome that will improve safety if they cannot devote sufficient time to each matter, both in court and in preparing for court. This is achieved by:

- Imposing listing caps of 35 matters (not families) for each sitting and maximum time frames for finalisation of matters, although there is some flexibility depending on the complexity of the matters. The flow-on effect of this is a requirement for more courtrooms and resources to service them.
- Using specialist staff and teams to undertake significant preparation and information gathering before court, so that risk can be properly analysed.

Source: Magistrates’ Court of Victoria, *Briefing*, 26 February 2020.

624 Submission 32A, Department of Justice, p. 1.

625 Submission 22, Family Law Practitioners Association WA, p. 5; Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

626 Mr Nicholas Snare, Northern Suburbs Community Legal Centre Inc., *Transcript of Evidence*, 11 March 2020, p. 9.

627 Submission 23, The Magistrates’ Society of Western Australia, p. 7; Judge Julie Wager, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 8; Ms Katalin Kraszlan, A/Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 11.

In recommending expansion of specialist Family Violence Courts throughout Victoria, the Royal Commission into Family Violence affirmed the benefits of the fully integrated model. It concluded that there was widespread support for the model and ‘compelling indications of its effectiveness’. It recommended that all FDV matters be heard and determined in a specialist Family Violence Court within five years.<sup>628</sup>

The Law Reform Commission of Western Australia (LRCWA) considered the benefits of a fully integrated model in its December 2013 Discussion Paper and 2014 Report. It observed that while a ‘one family, one court’ model might be ideal, ‘the constitutional, infrastructure and resourcing requirements for such a model are, in reality, prohibitive.’<sup>629</sup> Practically, some issues require urgent attention, such as an FVRO application, while others cannot proceed until expert evidence is presented.<sup>630</sup>

The Committee recognises that it would take a significant whole of government approach to make this landmark systemic change in Western Australia. The comprehensive FDV reform agenda in Victoria has required an equivalent budget response. Of the \$1.9 billion provided overall, \$130.3 million has been allocated to Family Violence Courts.

As such, a fully integrated model may not be feasible in the current constrained economic environment. However, some of the benefits of integration could be achieved through limited jurisdictional integration. The Committee considers that there is scope for integration of civil FVRO applications and criminal FDV matters, as happens in the Queensland Specialist Domestic and Family Violence Court model (see Box 11.2).

#### **Finding 75**

A court system that integrates both civil and criminal jurisdictions related to family and domestic violence would likely be beneficial in Western Australia, but would require significant funding and a whole of government approach that requires further investigation.

## **Integration within the Magistrates Court of Western Australia**

### **Integrating Family Violence Restraining Orders and family violence related criminal proceedings in the Magistrates Court of Western Australia**

Integration of civil and criminal FDV matters is not a new concept in Western Australia. The state’s original Family Violence Court (FVC) model included a variety of FDV matters, including Violence Restraining Order applications (before FVROs were introduced), criminal matters and some trials.<sup>631</sup> In 2014, the LRCWA received ‘very supportive’ submissions regarding a proposal for a further integrated pilot. The (then) Department of the Attorney

<sup>628</sup> Royal Commission into Family Violence, *Report and recommendations: Volume III*, Victorian Government, March 2016, Recommendations 60 and 61, pp. 160–161.

<sup>629</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 16.

<sup>630</sup> *ibid.*

<sup>631</sup> Law Reform Commission of Western Australia, *Court Intervention Programs: Consultation Paper*, Project No. 96, Government of Western Australia, June 2008, p. 133.

General indicated it would consider the proposal.<sup>632</sup> However, this was deferred pending the FVC evaluation being undertaken at that time. Clearly, integrating FVRO proceedings and FDV-related criminal proceedings did not eventuate.

The Queensland Specialist Domestic and Family Violence Court model (see Box 11.2) represents an achievable version of integration for Western Australia that offers many of the benefits of integration but avoids some of the more significant constitutional and legislative reforms required to pursue a Victorian-style model. Although this model could not feasibly be established in all court locations, integrated courts could be the innovators to develop appropriate practices and processes that improve outcomes for FDV victims in all courts.<sup>633</sup>

A common feature of both the Victorian and Queensland models is a solid and long-term government commitment to engage in innovation and provide adequate resourcing. Without this commitment, genuine impact will not be achieved.<sup>634</sup>

**Finding 76**

Integrating Family Violence Restraining Order matters and criminal matters arising from family and domestic violence within the Magistrates Court of Western Australia may be an achievable version of jurisdictional integration in Western Australia.

**Recommendation 63**

That the Attorney General ensures that the Department of Justice investigates implementing a specialist family and domestic violence court model that integrates Family Violence Restraining Order matters and criminal matters arising from family and domestic violence within the Magistrates Court of Western Australia.

In undertaking this investigation, the Department of Justice should consider the views of magistrates, support service providers, legal service providers, court users and other stakeholders to develop a potential model with a clear structure and objectives.

This model should be trialled at one metropolitan magistrates court and one regional and remote magistrates court for no fewer than two years.

The trial should be subject to a rigorous, independent and public evaluation process, which considers not only the economic outcomes, but also the experiences of court users.

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632 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 158.

633 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Project No. 104, Government of Western Australia, December 2013, p. 137.

634 Submission 23, The Magistrates' Society of Western Australia, p. 7.



**Box 11.2: Queensland's Specialist Domestic and Family Violence Courts**

The first specialist domestic and family violence court (DFV Court) in Queensland was trialled at Southport in 2015 following the recommendations of the Special Taskforce on Domestic and Family Violence in Queensland.

An initial evaluation noted strong progress in building collaborative relationships and a culture of innovation; higher levels of victim satisfaction; improved understanding of court outcomes for victims and perpetrators; higher perceptions of perpetrator accountability, and only modest and justified additional costs.<sup>635</sup> Following this positive evaluation, the Southport specialist DFV Court was made permanent, and the model is being expanded to four other locations.

The Queensland model integrates civil protection order proceedings and FDV-related criminal matters. The model aims to reduce victimisation by minimising the number of times a victim is required to attend court, and ensure perpetrator accountability and safe outcomes by keeping matters before a specialist magistrate who is familiar with the full scope of each matter.

The Southport specialist DFV Court is highly collaborative. The court is viewed as a touchpoint for service delivery and is supported by a multidisciplinary operational working group that aims to provide a coordinated and collaborative approach to the operations, monitoring and ongoing development of the specialist DFV Court. It is also a forum for members to raise and resolve risks and issues relating to the operation of the specialist court model.

The majority of protection order applications are made by Queensland Police on behalf of victims. The court is also empowered to make a civil protection order on its own initiative when dealing with criminal matters, or vary an existing order or make a temporary order final.

Integration with the Family Court of Australia has been identified as a gap in the current model. This issue has been referred for consideration as part of the current evaluation of the Southport specialist DFV court. Other measures to integrate with the Family Court of Australia include:

- Recent legislative changes which allow the specialist FDV magistrate to vary existing Family Court of Australia orders if urgently required.
- A recent pilot program which trialled direct referral of matters from Southport to the Federal Circuit Court magistrate for priority listing. However, resourcing issues with assisting parties beyond the referral—for example, providing legal advice and document preparation for referred parties—have been encountered.

Successive Queensland governments have committed to ongoing investment in court infrastructure and specialist facilities to improve the management of FDV matters, including videoconferencing, additional security, separate entrances and safe areas.

Sources: Southport Specialist Domestic and Family Violence Court, *Briefing*, 28 February 2020; Submission 36, Queensland Courts.

**Greater use of existing legislative integration mechanisms**

The MCWA has some existing legislative capacity to deal with an FVRO matter and criminal proceeding at the same time. The *Restraining Orders Act 1997* (RO Act) provides that a court convicting a person of certain violent offences may make an FVRO against that person to protect the victim of the offence.<sup>636</sup> While this provision may be used in some criminal cases already, there is not currently a process in place to facilitate this to happen. In the absence of a formalised process, there will certainly be instances where the opportunity to create this efficiency is missed in the course of a busy criminal list or where the relevant information is simply not available.

The Committee agrees with Legal Aid Western Australia's (LAWA) suggestion that either the MCWA or the Police could identify matters or parties that might be involved in concurrent

635 Griffith Criminology Institute, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports*, Griffith University, Gold Coast, February 2017, p. ii.

636 *Restraining Orders Act 1997*, (WA), s. 63A.

FVRO and criminal proceedings with a view to reaching a final determination on all such related matters at the same hearing. This would prevent duplication, leading to system efficiencies, and reducing survivor re-traumatisation.<sup>637</sup>

**Finding 77**

Provisions in the *Restraining Orders Act 1997* that provide that a court convicting a person of certain violent offences may make a Family Violence Restraining Order against that person to protect the victim of the offence are rarely used.

**Recommendation 64**

That the Attorney General and the Minister for Police ensure that the Magistrates Court of Western Australia and the Western Australia Police Force work together to develop a method of identifying concurrent family and domestic violence related criminal matters and Family Violence Restraining Order matters with a view to reaching a final determination on all such related matters at the same hearing.

**Overarching plan for family violence related matters in the Magistrates Court of Western Australia**

Whether MCWA civil and criminal FDV proceedings are integrated or not, the Committee supports LAWA's suggestion that the MCWA should establish an overarching plan to manage all proceedings involving FDV. An overarching plan would 'enhance the management and coordination of matters involving family violence' across MCWA jurisdictions.<sup>638</sup>

An overarching plan could coordinate processes between the MCWA's civil and criminal jurisdictions. For example, issuing an FVRO as part of criminal proceedings described above. A plan could also set out how to coordinate existing legal and support services, to ensure that all parties to proceedings are aware of, and able to access, support services.<sup>639</sup>

LAWA also suggests that the overarching plan could be developed and overseen by a strategic oversight group, comprising representatives of the Department of Justice and the MCWA.<sup>640</sup> The Committee considers the oversight group could also include the Police, representatives of legal services providers, such as LAWA, Aboriginal Legal Services, and Community Legal Western Australia, and support services or peak bodies, such as Women's Council for Family and Domestic Violence Services.

The oversight group may also benefit from including a representative of the CCWA and the FCWA.<sup>641</sup> Both these jurisdictions also deal with matters involving FDV and such involvement could be a forum for identifying and resolving issues of jurisdictional overlap, and help ensure consistency of practice.

LAWA also recommended that each magistrates' court should have a local oversight group, to plan and manage local process implementation and address operational issues.

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637 Submission 38, Legal Aid Western Australia, p. 4.

638 *ibid.*

639 *ibid.*

640 *ibid.*

641 Submission 38A, Legal Aid Western Australia, p. 10.

Stakeholder meetings are held in most court locations, including in the regions,<sup>642</sup> to provide attendees with the opportunity for 'information sharing, collaborative service delivery across key agencies, and relationship building between stakeholders.'<sup>643</sup> The Committee understands the frequency of these meetings is dependent on issues and projects.<sup>644</sup> An overarching plan would formalise this process and create a consistent structure across courts for coordinated feedback. This would provide certainty and consistency for both the court and its stakeholders.

#### **Finding 78**

The Magistrates Court of Western Australia does not have, but would benefit from, an overarching plan to manage all matters involving family and domestic violence.

#### **Recommendation 65**

That the Attorney General ensures that the Department of Justice and the Magistrates Court of Western Australia develop an overarching plan to manage all matters involving family and domestic violence. This plan should be developed and implemented by a strategic oversight committee including stakeholder representatives. This plan should require that each Magistrates Court of Western Australia registry has a local oversight group to facilitate information sharing and feedback between stakeholders for the purpose of process improvement and dealing with operational issues.

## **The Magistrates Court of Western Australia and the Family Court of Western Australia**

### **Overlap of proceedings between the Magistrates Court of Western Australia and the Family Court of Western Australia**

The MCWA and the FCWA often deal with related and concurrent proceedings. For example, in scenario one, an applicant may be granted an interim FVRO that prevents her husband from contacting her and their children. The husband may object to the interim FVRO, and/or lodge an application for a parenting order with the FCWA.

In scenario two, FCWA parenting proceedings are already underway, and an incident of family violence leads to one party applying for an FVRO in the MCWA. If the FVRO respondent objects, there will be concurrent proceedings in both courts.<sup>645</sup> Although the FCWA does have the power to issue FVROs against a party to family law proceedings, or any other person who gives evidence in proceedings,<sup>646</sup> in practice it issues very few. This is likely

642 Ms Corina Martin, Aboriginal Family Law Services, *Transcript of Evidence*, 13 November 2019, p. 5.

643 Submission 32B, Department of Justice, p. 9.

644 *ibid.*

645 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 161.

646 *Restraining Orders Act 1997*, (WA), s. 63.

because it does not have sufficient resources,<sup>647</sup> and because, until recently, it was not able to hear FVRO applicants without the respondent being informed and present.<sup>648</sup>

The FCWA does have the power to issue injunctions to restrict the behaviour of parties in family law matters, and regularly exercises this power. However, LAWA noted that while the injunctions clearly demonstrate that certain behaviours are inappropriate, they are not enforceable in the same way as FVROs, which limits their effectiveness. Further, it is simpler and quicker to obtain an FVRO than an FCWA injunction.<sup>649</sup>

The Committee received evidence suggesting that duplication could be reduced by transferring FVRO matters from the MCWA (or the CCWA) to the FCWA, where there are related proceedings in the FCWA.<sup>650</sup> The LRCWA canvassed this idea in 2014, but it considered that the potential benefit of reducing duplication was unlikely to be realised as a contested FVRO must be dealt with as quickly as possible, while a hearing for a family order can often take much longer. Generally, there would still be two hearings, albeit in the same court. It also considered that the FCWA did not have sufficient infrastructure to deal with the volume of FVRO applications.<sup>651</sup> The LRCWA recommended that the Western Australian Government undertake a comprehensive evaluation of this option.<sup>652</sup> This did not occur.<sup>653</sup>

On 6 April 2020, the *Family Violence Legislation Reform (COVID-19 Response) Act 2020* amended the RO Act to clarify that the FCWA has the power to hear FVRO applications *ex parte* during other FCWA proceedings. The amendment may lead to a decrease in the number of FVRO proceedings commenced in the MCWA when there are already existing FCWA proceedings underway. To have this effect, parties to FCWA proceedings would need to be aware that an FVRO application could be heard without the respondent in the FCWA, and the FCWA would need to have a clear process in place to deal with FVRO applications. The FCWA also needs to be appropriately resourced to respond to FVRO applications in a timely manner. Given the recentness of this amendment, it is unclear how concurrent and duplicated matters may be affected.

These changes do not affect scenario one type matters, where FVRO proceedings in the MCWA are commenced before proceedings in the FCWA. For such matters, and for scenario two matters where FVRO proceedings continue to be commenced in the MCWA, there is still benefit to further consideration of the transfer of FVRO proceedings from the MCWA (or the CCWA) to the FCWA where there are existing FCWA proceedings underway. The Committee agrees with the LRCWA's recommendation for the Western Australian Government to undertake a comprehensive evaluation of this option.

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647 National Domestic and Family Violence Bench Book, *Jurisdiction of the Family Court of Western Australia*, July 2019, accessed 8 May 2020, <<https://dfvbenchbook.aija.org.au/foundational-information/jurisdiction-of-the-family-court-of-western-australia/>>.

648 Submission 38A, Legal Aid Western Australia, p. 12.

649 *ibid.*

650 Magistrate Deen Potter, The Magistrates' Society of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 8.

651 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 62, p. 164.

652 *ibid.*

653 Submission 32B, Department of Justice, p. 10.

**Finding 79**

Legislative changes that amended the *Restraining Orders Act 1997* to clarify that the Family Court of Western Australia has the power to hear *ex parte* Family Violence Restraining Order applications may reduce the number of concurrent related matters being heard in the Family Court of Western Australia and the Magistrates Court of Western Australia.

**Recommendation 66**

That the Attorney General ensures that the Department of Justice undertake an evaluation to determine the feasibility and potential outcomes of transferring Family Violence Restraining Order matters from the Magistrates Court of Western Australia to the Family Court of Western Australia where there are related proceedings currently before the Family Court of Western Australia.

### **Minimising inconsistencies between a Family Court of Western Australia order and a Magistrates Court of Western Australia Family Violence Restraining Order**

Problems can arise when both the FCWA and the MCWA (or CCWA) make orders around contact between parents and children. For example, the FCWA may make a family order allowing a father contact with his children. If the children's mother applies to the MCWA for an FVRO against the father without disclosing the existence of the family order, the conditions of an interim FVRO may be inconsistent with the conditions of the family order. This inconsistency creates confusion and potential points of conflict between the parties as to what contact is allowed.

The inconsistency also creates confusion for the Police when trying to enforce the conditions of the FVRO. Police may be notified of a breach of the FVRO, but the contact may be allowed under the family order. The conditions of the family order override the conditions of the FVRO; the FVRO does not apply to the extent of any inconsistency.<sup>654</sup> Therefore, if Police prefer a charge for breaching the FVRO, it will later have to be withdrawn because the contact was allowed under the family order.<sup>655</sup>

A memorandum of understanding (MoU) has been in place since 2009 which governs information sharing between the courts. This MoU allows certain MCWA representatives to request information from the FCWA as to whether a person involved in MCWA proceedings is also involved in FCWA proceedings. The MoU also allows certain FCWA representatives to directly access the MCWA's database to check whether a person involved in FCWA proceedings is also involved in proceedings before the MCWA. If such proceedings were uncovered, the FCWA would need to submit a request to the MCWA to provide copies of relevant information.<sup>656</sup> The CCWA is not a party to this MoU.

<sup>654</sup> *Family Law Act 1975*, (Cth), s. 68Q; *Restraining Orders Act 1997*, (WA), s. 65.

<sup>655</sup> Superintendent Martin Cope, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 15.

<sup>656</sup> Submission 45, Family Court of Western Australia, p. 2.

However, the LRCWA found that the type of information sharing permitted under the MoUs was not occurring widely, particularly by the MCWA.<sup>657</sup> It recommended that the MCWA, CCWA and FCWA each have access to the others' records to determine if FVRO parties have family orders in place or proceedings underway, and vice versa, and update their information sharing protocols.<sup>658</sup>

This recommendation has not been implemented. This is partly for practical reasons; MCWA staff remain unable to access the FCWA's federal electronic case management database, Casetrack.<sup>659</sup> However, the FCWA is currently transitioning from Casetrack to Western Australia's Integrated Court Management System (ICMS). This should be completed by late 2021. This will allow the courts to enhance their information sharing arrangements.<sup>660</sup>

New amendments to the *Restraining Orders Act 1997* (WA) will require the MCWA (or CCWA) to ask FVRO applicants about the existence of, or pending application for, a family order. If the MCWA becomes aware of the existence of, or proceedings to obtain, a family order, the MCWA must take steps to obtain a copy of the family order, or information about the its terms.<sup>661</sup>

Under the current legislation the onus is on the FVRO applicant to inform the court of any existing or pending family orders, and the terms of those orders. The amended legislation will shift the onus to the MCWA to request that information. In doing so, the MCWA should be more readily able to take into account any FCWA orders when it makes FVROs, thereby minimising inconsistency and related confusion.

A similar provision does not exist in FCWA legislation. However, the FCWA requires a person commencing parenting proceedings to depose on oath whether there is a current FVRO between the parties, and if so, to provide a copy.<sup>662</sup> Since 29 January 2019, there has also been an information sharing agreement between the heads of the FCWA and MCWA regarding *Family Court Orders in Restraining Order Proceedings*. It provides that if the FCWA makes an order that is inconsistent with an MCWA FVRO, the FCWA will scan and email a copy of the order to the MCWA. Staff at the MCWA will lodge the FCWA order against the FVRO in the courts ICMS database.<sup>663</sup>

The Committee hopes that potential legislative changes and the information sharing arrangements will be sufficient to minimise the risk of inconsistencies between orders made by the MCWA and the FCWA.

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657 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, p. 162.

658 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendations 30 and 61, pp. 106–107, 163.

659 Submission 45, Family Court of Australia, pp. 1–2.

660 *ibid.*, p. 2.

661 *Family Violence Legislation Reform Act 2020*, (WA), s. 80.

662 Submission 45, Family Court of Western Australia, p. 9.

663 Department of Justice, *Magistrates Court Information Bulletin No 1 of 2019: Family Court Orders in Restraining Order Proceedings*, Western Australia, 29 January 2019, p. 1.

## Overlap between the Magistrates Court of Western Australia and the Children's Court of Western Australia

The MCWA and the CCWA both have jurisdiction to hear an FVRO application where the person protected by an order is under 18 years old, and the bound person is 18 years old or older. The CCWA identified a difficulty arising if orders are made in both jurisdictions, and the FVRO respondent objects to both FVROs leading to contested hearings in both courts. The CCWA raised the questions:

Should the hearings be consolidated?

Which Court should determine the hearing?

Should each Court hear each application which then requires both Courts to deal with the same facts in two separate jurisdictions?<sup>664</sup>

Both the (former) President of the CCWA and the Chief Magistrate agreed that legislative guidance to assist the courts to consolidate the matters would be helpful.<sup>665</sup> The Chief Magistrate's view is that the MCWA would be the appropriate court when the order is against an adult.<sup>666</sup>

### Recommendation 67

That the Attorney General directs the Department of Justice to consider the need for and scope of legislative guidance to resolve potential duplication between concurrent matters before the Magistrates Court of Western Australia and the Children's Court of Western Australia.

There are no formal information sharing avenues between the MCWA and the CCWA.<sup>667</sup> The CCWA does have access to ICMS that provides access to other court's databases for the purpose of checking whether the parties are involved in any related matters. However, this search may not always uncover information in cases where parties have different family names.<sup>668</sup>

### Recommendation 68

That the Attorney General ensures that the Department of Justice works with the Magistrates Court of Western Australia and Children's Court of Western Australia to develop information sharing protocols.

## Regional Magistrates courts can exercise the jurisdiction of other courts

The MCWA, constituted by a magistrate sitting at a place outside the metropolitan area, may exercise the non-Federal jurisdiction of the FCWA.<sup>669</sup> However, the Committee heard

<sup>664</sup> Submission 15A, Children's Court of Western Australia, p. 2.

<sup>665</sup> *ibid.*; Submission 10A, Chief Magistrate of Western Australia, p. 5.

<sup>666</sup> Submission 10A, Chief Magistrate of Western Australia, p. 5.

<sup>667</sup> Submission 15A, Children's Court of Western Australia, p. 3.

<sup>668</sup> *ibid.*

<sup>669</sup> *Family Court Act 1997*, (WA), s. 39.

evidence that regional magistrates are reluctant to hear family law matters. Instead, applications must be filed in the FCWA metropolitan registry, contributing to delays in matters being heard, and potentially increasing stress in an already difficult situation.<sup>670</sup>

LAWA said that, in the experience of its lawyers:

‘the ability of Magistrates in regional locations to hear family law applications varies widely and can be influenced by factors including:

- Capacity and time/workload pressure on the Court from other matters
- Number and resources of Magistrates at that location
- The experience and training of the particular Magistrate in family law (most have a criminal law background)
- Additional pressures on judicial and court administrative staff in having to deal with family law matters and documentation.’<sup>671</sup>

New magistrates currently undertake a two- or three-day induction at the FCWA before moving to their court. Family law topics are also included as part of the annual magistrates conference.<sup>672</sup> The Committee considers this to be insufficient experience for a magistrate to preside over family law matters. It is likely that this lack of knowledge influences magistrates’ reluctance to hear family law matters.

#### **Finding 80**

Regional magistrates of the Magistrates Court of Western Australia are reluctant to exercise the non-Federal jurisdiction of the Family Court of Western Australia due to a lack of knowledge about the subject matter and relevant legislation, and a significant workload leaving limited time to improve that knowledge.

MCWA magistrates also exercise the jurisdiction of the CCWA in registries outside the metropolitan area. The MCWA and CCWA have some jurisdictional similarities and overlap, for example FVRO applications. The Committee expects that regional MCWA magistrates have some knowledge and experience with how to deal with similar matters, although there would be separate considerations to take into account when dealing with matters involving children. However, the MCWA does not have a jurisdiction equivalent to the CCWA’s care and protection jurisdiction, meaning regional magistrates are likely to have limited knowledge about the law and practice in this area.

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670 Submission 16, Aboriginal Family Law Services, p. 12.

671 Submission 38A, Legal Aid Western Australia, p. 11.

672 Submission 45, Family Court of Western Australia, p. 8.



Under the *Children and Community Services Act 2004*, the Chief Executive Officer (CEO) of the Department of Communities can make an application for a protection order for a child.<sup>673</sup> There are several types of protection orders:

- Supervision order: a child remains living with either or both parents, but Department of Communities workers will check in with the family to ensure a child is safe.
- Time-limited order: the Department of Communities CEO is granted parental responsibility for a child. The CEO will make important decisions for the child, including where he or she lives, until the child can be reunified with one or both parents. The order is limited to two years.
- Until 18 order: the Department of Communities CEO is granted parental responsibility until the child turns 18.
- Special guardianship order: a carer (or carers) is granted parental responsibility for a child.<sup>674</sup>

This challenging and emotionally charged jurisdiction requires specialist knowledge, which MCWA magistrates are unlikely to have. Until recently, new magistrates would sit with a CCWA magistrate for up to two days to observe CCWA matters before moving to their regional placement.<sup>675</sup> The amount of time a new magistrate spent observing the CCWA was recently increased. A newly appointed magistrates recently observed CCWA matters for a week. The (former) CCWA President, Judge Wager, considered this to be a sufficient amount of time for the new magistrate to understand the CCWA matters.<sup>676</sup>

#### **Finding 81**

Regional magistrates of the Magistrates Court of Western Australia have limited knowledge of the subject matter and relevant legislation of the Children's Court of Western Australia's care and protection jurisdiction despite having the authority to hear such matters.

#### **Recommendation 69**

That the Attorney General ensures that the Department of Justice works with the Chief Magistrate to ensure that regional magistrates exercising the jurisdiction of the Family Court of Western Australia and the Children's Court of Western Australia receive formal initial and ongoing training to preside over these matters with sufficient knowledge and expertise.

<sup>673</sup> *Children and Community Services Act 2004*, (WA), Division 3.

<sup>674</sup> Submission 15, Children's Court of Western Australia, p. 4.

<sup>675</sup> Judge Julie Wager and Magistrate Andrée Horrigan, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, pp. 7–8.

<sup>676</sup> Judge Julie Wager, Children's Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 8.



## Chapter 12

### Inadequacy of existing court facilities and security

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#### Court infrastructure limits effective management

The physical design of Magistrates Court of Western Australia (MCWA) buildings may affect the efficiency of court processes, as well as the experience of court users. Many courts are located in buildings that are no longer suitable for the volume of matters before them, nor the dynamics of family and domestic violence.

Overcrowding in waiting areas can cause anxiety for court users, particularly when both FDV victims and perpetrators wait in the same area. A lack of rooms limits the opportunity for legal and support services to assist court users.

Although future courts will incorporate features to provide safety and support to FDV victims, existing court facilities need significant improvement.

#### Court design principles now emphasise victim experience and safety

Thirty years ago, the design standard for court buildings included features such as a single lift, single staircase, and single entrance for security reasons.<sup>677</sup> As the understanding of the dynamics of FDV has changed, together with the court workload, court design across Australia now recognises the need to minimise contact between parties, and focus on victim safety. Suggested design features now include multiple entrances, break out rooms, and separate, safe waiting areas for victims of crime.<sup>678</sup>

The recently completed facilities in Carnarvon, Kalgoorlie, and Kununurra, and the under-construction Armadale justice complex, demonstrate the changed focus in court design. The regional courts each have separate entrances for victims and perpetrators, and dedicated areas for victim support.<sup>679</sup> The Armadale facility, due for completion in 2022, will have separate and secure facilities for victims of crime, a Western Australia Police Force (Police) family violence unit co-located at the facility, a pre-trial conference room, and five courtrooms (the current facility has three). Police and justice staff will be co-located at the facility.<sup>680</sup>

The Committee was impressed by some of the design features it saw and heard about during its investigative travel to the east coast. In Victoria, existing court buildings are being physically redesigned to incorporate separate entrances for victims and alleged

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677 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 3; Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 11.

678 Ms Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, pp. 4–5; Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 4.

679 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 4.

680 The Hon. John Quigley MLA, Attorney General, and the Hon. Michelle Roberts MLA, Minister for Police, *Foundations laid for new Armadale Courthouse and Police Complex*, media release, 13 March 2020.

perpetrators, and safe waiting areas for women.<sup>681</sup> Queensland has recently undergone an expansion of its court infrastructure, which includes additional security, separate entrances and exits, and safe rooms.<sup>682</sup>

The Committee toured the Southport Specialist Domestic and Family Violence Court and noted the registry for domestic violence order applicants and respondents, and the comfortable layout of a secure waiting area for women which included a play area for children.<sup>683</sup> The Committee also toured the recently renovated ACT Magistrates Court. The upgraded building is light and airy, and features separate rooms for shuttle conferencing, including a secure area for Family Violence Intervention Order applicants. The building has dedicated spaces for a number of assessment and support services, including the Domestic Violence Crisis Service, Legal Aid ACT, and ACT Health agencies including for alcohol and drug use, mental health issues, and child and youth protection.<sup>684</sup>

#### **Finding 82**

Modern court design principles now incorporate important design elements to address concerns about victim safety. Unfortunately, the vast majority of Western Australian court buildings were built prior to the adoption of such principles.

### **Many courts are no longer ‘fit for purpose’**

As the number of MCWA (and Children’s Court of Western Australia (CCWA)) proceedings continues to grow, many court buildings are no longer ‘fit for purpose’.<sup>685</sup> Buildings that used to cater to courts’ requirements are now too small, and can be difficult to navigate.<sup>686</sup> Limited offices create challenges for lawyers trying to advise their clients. Lawyers are often forced to take instructions and give advice out in the open, compromising confidentiality.<sup>687</sup> Further, despite a desire to co-locate support services, it is challenging to find space in which service providers could operate.<sup>688</sup>

*‘Courts should provide facilities to assist parties to attend court without confrontation or unnecessary trauma with appropriate and separate waiting facilities.’*

– Commissioner Chris Dawson,  
Western Australia Police Force

Witnesses spoke of overcrowding in waiting rooms, and Family Violence Restraining Order (FVRO) applicants and respondents in the same matter being required to wait in the same area. This is a security risk, and can cause fear, stress and anxiety for FDV survivors.<sup>689</sup> The Committee was also concerned to hear that room limitations at the CCWA means it is

<sup>681</sup> Submission 12, Women’s Council for Domestic and Family Violence Services, p. 7.

<sup>682</sup> Submission 36, Queensland Courts, pp. 1–2.

<sup>683</sup> Southport Specialist Domestic and Family Violence Court, *Briefing*, 28 February 2020.

<sup>684</sup> ACT Magistrates Court, *History of the ACT Magistrates Court*, 13 December 2019, accessed 18 May 2020, <<https://www.courts.act.gov.au/magistrates/about-the-courts/history-of-the-court>>.

<sup>685</sup> Submission 30, Community Legal Western Australia, p. 7.

<sup>686</sup> Judge Julie Wager, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 5.

<sup>687</sup> Submission 30, Community Legal Western Australia, p. 7.

<sup>688</sup> Submission 10, Chief Magistrate of Western Australia, p. 3; Judge Julie Wager, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 5.

<sup>689</sup> Submission 30, Community Legal Western Australia, p. 7.

difficult to physically separate adults charged with historical sexual offences from children involved in matters such as protection and care proceedings.<sup>690</sup>

Regional courts are often ‘in even worse states of disrepair or appropriateness than metropolitan courts’.<sup>691</sup> Many regional courts are a ‘tack-on’ to a police station or are in old buildings like a community meeting hall.<sup>692</sup> Operating from such facilities can present court staff, magistrates, legal and support services and court users with additional challenges.

The introduction of FVRO conferencing (see Chapter 7) will place additional strain on facilities that are already struggling to accommodate current levels of demand. A representative of the Department of Justice noted that all metropolitan courts, including Armadale upon completion, will be able to cater for parties to be separated. Facility upgrades have also been undertaken to better accommodate pre-trial conferencing.<sup>693</sup> Procedures will also help to achieve physical separation, with staggered arrival times to ensure FVRO parties remain separate.<sup>694</sup>

#### **Finding 83**

Many Magistrates Court of Western Australia buildings are no longer ‘fit for purpose’.

### **Existing facilities need to be improved**

Although future courts will cater for FDV victims with two entrances and a dedicated area for victim support,<sup>695</sup> the current state of many court buildings inhibits court processes, affects court user experience, and restricts the capacity of holistic service delivery. Ideally, new, purpose built facilities are needed to replace old facilities. However, the Committee recognises that such capital works would require significant funding. Serious consideration needs to be given to how existing court facilities can be improved to incorporate important safety features to cater for FDV victims.

#### **Finding 84**

Older Magistrates Court of Western Australia facilities need to be improved to address concerns about victim safety.

#### **Recommendation 70**

That the Attorney General ensures that the Department of Justice undertakes a review of existing court facilities to consider how necessary safety requirements and support services can be accommodated at or near existing Magistrates Court of Western Australia buildings.

690 Judge Julie Wager, Children’s Court of Western Australia, *Transcript of Evidence*, 10 February 2020, p. 5.

691 Ms Sharryn Jackson, Community Legal Western Australia, *Transcript of Evidence*, 11 March 2020, p. 2.

692 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Transcript of Evidence*, 20 November 2019, p. 11.

693 Submission 32A, Department of Justice, p. 11.

694 Mr Michael Johnson, Department of Justice, *Transcript of Evidence*, 10 February 2020, p. 3.

695 *ibid.*, p. 4.

### Child-minding services

Court processes can be delayed or drawn out due to a lack of a suitable child-minding service for court users.<sup>696</sup> FVRO applicants who have children may have difficulties attending at court, or accessing other family violence support services,<sup>697</sup> as they do not want their children to come to court with them, but have limited child care options.

The Family Court of Western Australia (FCWA) is the only Western Australian court that has on-site child minding facilities.<sup>698</sup> The Department of Justice has previously assisted court users at other courts by arranging for children to be accommodated in nearby childcare facilities, however this 'became problematic'.<sup>699</sup> The Department of Justice has also previously looked at setting up childcare facilities within courts, however challenges with licensing requirements and practical considerations were prohibitive. There are currently no plans for child-minding facilities at any MCWA court location.<sup>700</sup>

The Committee suggests the Department of Justice should review its options around the provision of child-minding facilities at Magistrates courts. Child-minding is a valuable support service that would reduce potential trauma for children caused by being present during court proceedings, as well as reduce potential disruption to court processes.

#### **Finding 85**

The lack of child-minding facilities at court buildings throughout Western Australia limits accessibility.

#### **Recommendation 71**

That the Attorney General ensures that the Department of Justice investigate introducing child-minding facilities within Magistrates Court of Western Australia buildings.

### Security arrangements

A lack of security for at-risk court users can be a significant barrier to their participation in court processes.<sup>701</sup> The adequacy of security personnel, equipment and procedures at Magistrates courts is location dependent. For example, while the Perth Magistrates Court appears to have suitable security arrangements, many other courts, including in suburban and regional areas, have limited security in place.<sup>702</sup>

Community Legal Western Australia stated that while security personnel do an excellent job, there are limited numbers in most courts, and often they are not present in communal waiting areas.<sup>703</sup> The Northern Suburbs Community Legal Centre stated that the Joondalup Magistrates Court has insufficient numbers of security guards present to cover the building

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696 Submission 23, The Magistrates' Society of Western Australia, p. 7.

697 Submission 29, Magistrate Andrée Horrigan, p. 4.

698 Ms Joanne Stampalia, Department of Justice, *Transcript of Evidence*, 13 November 2019, p. 6.

699 *ibid.*

700 *ibid.*

701 Submission 20, Relationships Australia WA Inc., p. 3.

702 Submission 10, Chief Magistrate of Western Australia, p. 7.

703 Submission 30, Community Legal Western Australia, p. 7.

and each courtroom.<sup>704</sup> The Chief Magistrate identified that some regional courts may have a Police presence during criminal proceedings, but are unlikely to during civil matters unless there is an identified need.<sup>705</sup>

The Committee was intrigued by security arrangements at the Neighbourhood Justice Centre (NJC) in Melbourne. The NJC has no 'airport-style' security with x-ray machines and scanners, instead it has a 'dynamic security model', with security options customised for individual cases. All NJC staff are responsible for security, and the model relies on staff experience and knowledge to ensure client safety.<sup>706</sup> The Committee was heartened that the model has been successful at the NJC, but would be very cautious about introducing such a model into Western Australian courts.

The Department of Justice have recently made a number of changes to security arrangements at Magistrates court buildings, including:

- increased staffing levels
- improved primary security checkpoints, such as the installation of x-ray equipment and metal detection portals
- upgraded and expanded closed circuit television systems.<sup>707</sup>

The Committee hopes that these improved security arrangements decrease risks and make court users safer within court precincts. It considers that security improvements must continue to be made across all courts, together with overall changes to make facilities more accessible.

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704 Submission 19, Northern Suburbs Community Legal Centre Inc., p. 4.

705 Submission 10, Chief Magistrate of Western Australia, p. 7.

706 Neighbourhood Justice Centre, *Briefing*, 25 February 2020.

707 Submission 32A, Department of Justice, pp. 11–12.





## Chapter 13

### An integrated government response

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#### Information sharing

Family and domestic violence is a complex issue that requires a coordinated, whole-of-government response. Information sharing is a crucial aspect of this. Structured sharing of important, often sensitive, information is frequently needed to achieve improved community outcomes, benefits to clients and better coordinated services. Government agencies have a duty of care to all clients, especially children, and information held by other agencies can be crucial to safeguarding welfare and safety.<sup>708</sup>

It is well known that the ‘siloes’ structure of government agencies and portfolio areas creates legislative, technological and cultural challenges to information sharing. Coronial inquiries into FDV-related deaths have often found that many service providers hold some information about a family experiencing FDV, but it has been kept separate for various reasons.<sup>709</sup>

The current framework for sharing FDV-relevant information between agencies is established by a mixture of legislation, Memoranda of Understanding (MoU) and policy. The *Children and Community Services Act 2004* broadly provides for the request and disclosure of information relevant to the safety of a person subjected or exposed to FDV between government agencies and other prescribed entities and people.<sup>710</sup> This exchange can occur without the person affected by FDV’s consent.<sup>711</sup> Various other pieces of legislation also provide for information exchange regarding serious FDV offenders.<sup>712</sup>

A tripartite MoU between the Department of Communities, Department of Justice and the Western Australia Police Force (Police) outlines the processes for exchanging information regarding serious FDV offenders.<sup>713</sup> A further MoU facilitates information sharing to provide effective services to FDV victims, and manage perpetrators subject to the Magistrates Court of Western Australia’s (MCWA) Family Violence List.<sup>714</sup>

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708 Public Sector Commission, *Policy Framework and Standards for Information Sharing Between Government Agencies*, Public Sector Commissioner’s Circular No. 2014-02, Western Australia, p. 1.

709 Domestic Violence Victoria, *Briefing*, 25 February 2020.

710 *Children and Community Services Act 2004*, (WA), ss. 23, 28A, 28B, 28C.

711 Ombudsman Western Australia, *A report on giving effect to the recommendations arising from the Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, November 2016, p. 28.

712 See, for example, *Restraining Orders Act 1997*, (WA), s. 70A; *Sentence Administration Act 2003*, (WA), s. 97B; *Prisons Act 1981*, (WA), s. 113.

713 Submission 35A, Department of Communities, p. 2.

714 Submission 39A, Western Australia Police Force, p. 3.

More generally, the Western Australian Government has endorsed a Policy Framework and Standards for Information Sharing Between Government Agencies, which is intended ‘to facilitate information sharing on a structured basis’.<sup>715</sup>

### **Information should be shared proactively**

The legislative framework provides for information to be disclosed automatically, even where no request has been made. This allows for a proactive approach to information sharing between agencies. However, this only occurs in some circumstances. For example, every FDV incident report generated by the Police is automatically shared with the Department of Communities and the Family and Domestic Violence Response Team (FDVRT) (see below), which then triages the matter, considers risk factors and identifies other actions that need to be taken.<sup>716</sup> In this case, the proactive sharing of information triggers a wider systems response.

By comparison, information sharing between the Department of Communities and the Department of Justice (including the MCWA) currently occurs on a case-by-case basis.<sup>717</sup> Information exchange processes are not automatic; a request must be made,<sup>718</sup> which can lead to gaps in information. For example, the Department of Communities can request information on the prison movements of serious FDV offenders via the Victim Notification Register. However, where such an offender is incarcerated for offences other than FDV, there are no grounds to request this information.<sup>719</sup> This rigidity is unsatisfactory and potentially compromises victim safety.

### **Information is not always forthcoming or timely**

The Committee heard evidence that even where existing legislation or client consent allows for information sharing, it is not always forthcoming and timely. This could be due to a lack of resources to respond to information requests, or that there is no sense of urgency to respond. Significant resources can be wasted chasing up an information request and there are no consequences for agencies that fail to comply.<sup>720</sup>

### **Leadership is key to improving information sharing**

The Department of Communities, as the lead agency for developing a whole-of-government FDV strategy, has acknowledged that overcoming information ‘silos’ will be a major challenge for implementation and will require focused attention.<sup>721</sup> The introduction of privacy and data sharing legislation to better facilitate information sharing across government agencies and across jurisdictions will not be the sole solution. Leadership,

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715 Government of Western Australia, *Policy Framework and Standards: Information Sharing Between Government Agencies*, Perth, November 2017, p. 3.

716 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 10.

717 Submission 35A, Department of Communities, p. 1.

718 Ms Astrid Kalders, Department of Communities, *Transcript of Evidence*, 10 February 2020, p. 5.

719 Submission 35A, Department of Communities, p. 2.

720 Closed hearing.

721 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 10 February 2020, pp. 4, 6.

cultural change and improved IT systems are also important factors if information sharing is to be successful.<sup>722</sup>

The Committee was encouraged to hear there is broad commitment from the leadership of the Department of Communities, the Department of Justice and the Police to improve information sharing. There are now regular joint meetings of their corporate executives to discuss emerging and common issues, including information sharing.<sup>723</sup> However, it is clear there remains work to do, particularly in relation to ‘getting on the front foot’ in sharing risk information.<sup>724</sup>

### **Other jurisdictions have simplified their family and domestic violence information sharing frameworks**

The existing framework for sharing FDV-related information is complex and confusing. The combination of legislation, MOUs and policy should be streamlined to provide clear authority for organisations to share information. Other jurisdictions have successfully introduced reforms to simplify their FDV information sharing frameworks.

Victoria’s Royal Commission into Family Violence (Royal Commission) found that the complexity of the legislative environment there meant that organisations did not fully understand their obligations and were consequently reluctant to share information.<sup>725</sup> It noted there needed to be a rebalancing of the way information sharing was viewed, to ensure that concerns about privacy did not outweigh concerns about safety.<sup>726</sup>

The Royal Commission recommended a system of reforms to provide a clear structure for FDV information sharing (see Box 13.1). This approach was preferred because existing mechanisms were complex and confusing, and did not offer a comprehensive solution to information sharing barriers that were identified. The reforms created a single point of reference for the law relating to sharing FDV-related information. Aspects of these reforms were described to the Committee as ‘transformational’, particularly the availability of Central Information Point reports.<sup>727</sup>

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722 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 10 February 2020, pp. 4, 6; Royal Commission into Family Violence, *Report and recommendations: Volume III*, Victorian Government, March 2016, p. 155.

723 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 15; Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 10 February 2020, p. 7; Submission 35A, Department of Communities, p. 1.

724 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 15; Ms Tanya Elson, Department of Communities, *Transcript of Evidence*, 10 February 2020, p. 5.

725 Royal Commission into Family Violence, *Summary and recommendations*, Victorian Government, March 2016, p. 155.

726 *ibid.*

727 Domestic Violence Victoria, *Briefing*, 25 February 2020.

**Box 13.1: Victoria Family and Domestic Violence Information Sharing Reforms**

The Royal Commission recommended information sharing reforms that supported its position that FDV perpetrators should be kept in view and accountable:

- Creating a specific FDV information sharing regime under the *Family Violence Protection Act 2008* (Vic), providing clear authority for prescribed organisations to share information
- Developing an information sharing culture, by producing guidance materials and rolling out training
- Establishing a Central Information Point (CIP), to provide up-to-date information to assist risk assessment
- Improving outdated IT systems.<sup>728</sup>

The Family Violence Information Sharing Scheme is now enshrined in Part 5A of the *Family Violence Protection Act 2008* (Vic) and authorises a select group of prescribed entities to share information between themselves for FDV risk assessment and management. Entities must share information that meets the requirements of the Scheme in a timely manner.<sup>729</sup>

The Family Violence Multi-Agency Risk Assessment and Management Framework is also established in the Act. It provides guidance to organisations prescribed under regulations that have responsibilities in assessing and managing FDV risk. It supports these organisations to recognise a wide range of risk indicators for children, older people and diverse communities across different identities, family and relationship types. Its benefits are that:

- All parts of the service system have a shared understanding of risk assessment and management.
- Professionals have the skills and a framework to guide appropriate risk management action.
- There is a clear understanding of the responsibilities of other parts of the system to coordinate and implement safety and accountability planning.<sup>730</sup>

The CIP consolidates information about a perpetrator of family violence into a single report for use by FDV practitioners who assess and manage risk. CIP reports bring together information from Court Services Victoria, Victoria Police, Corrections Victoria, and the Department of Health and Human Services. Currently CIP reports involve manual collection of information, although an automated system is under development. The reports are prepared and delivered within hours of request.<sup>731</sup>

Sources: Victorian Government; Royal Commission into Family Violence, *Summary and recommendations*.

In Queensland, information sharing is enabled by the *Domestic and Family Violence Protection Act 2012* (Qld) (DFV Protection Act). At the Southport Specialist Domestic and Family Violence Court (see Box 11.2), the Operational Working Group meets fortnightly to ensure collaboration amongst the court's stakeholders. The DFV Protection Act allows stakeholders to share information amongst the integrated response network, and also feed information to the wider Integration Response Group and the specialist Police FDV

728 Royal Commission into Family Violence, *Summary and recommendations*, Victorian Government, March 2016, Recommendations 5–9, pp. 46–48.

729 Victorian Government, *Summary of the Family Violence Information Sharing Guidelines: Guidance for Information Sharing Entities*, Melbourne, n.d., p. 1.

730 Victorian Government, *Family Violence Multi-Agency Risk Assessment and Management Framework*, 27 May 2020, accessed 16 June 2020, <<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>>.

731 Victorian Government, *The Central Information Point*, 4 July 2019, accessed 16 June 2020, <<https://www.vic.gov.au/help-professionals-working-victims-domestic-violence>>.

Taskforce. The Taskforce hosts weekly triage meetings, where information gathered is used for risk assessment and case management of a group of high-risk FDV perpetrators.<sup>732</sup>

Both the Operational Working Group and Integrated Response Group have built-in review mechanisms to learn from mistakes where a system gap or failure has occurred in a high-risk case.<sup>733</sup>

In the Australian Capital Territory, the Family Violence Intervention Program is a coordinated interagency response to family violence incidents that come to the attention of police and proceed to criminal prosecution. Information is shared at weekly case tracking meetings attended by partner agencies.<sup>734</sup> However, the case tracking process is currently being re-mapped, as the current program does not capture civil court matters involving FDV or matters known to community service providers outside the court system.<sup>735</sup>

## Integrated response and case management

Agencies need to do more than just share information to respond effectively to the needs of families experiencing FDV. Ideally, families should also benefit from an integrated, systemic response and case management.<sup>736</sup> Agencies should use their shared information to collaboratively assess, plan and facilitate options and services to meet each family's holistic needs. Courts should be just one part of this systemic response.

In Western Australia, FDVRTs provide a collaborative, multi-agency response to individuals and families that have been identified as being at high risk of future serious harm. FDVRTs are a partnership between the Police, Department of Communities (Child Protection and Family Services), and community sector FDV services. An FDVRT may be engaged when any of the involved agencies becomes aware of an FDV incident.<sup>737</sup>

When Police attend an FDV incident, the incident is recorded in a Family Violence Incident Report (FVIR), which is sent to an FDVRT for assessment and triage. Depending on the triage outcome, the FDVRT will nominate a lead agency to liaise with the adult victim, and to develop a multi-agency safety plan. To do this, the FDVRT will contact relevant agencies to contribute information to and/or participate in ongoing multi-agency case management.<sup>738</sup>

The previous Community Development and Justice Standing Committee discussed the operation and effectiveness of FDVRTs in its 2015 report, *A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence*.<sup>739</sup> At that time,

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732 Southport Specialist Domestic and Family Violence Court, *Briefing*, 28 February 2020.

733 *ibid*.

734 Australian Institute of Criminology, *ACT Family Violence Intervention Program review*, Canberra, 2012, p. xiii.

735 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

736 Submission 33, A/Commissioner for Victims of Crime, p. 5.

737 Department of Communities, *Family and Domestic Violence Response Team*, 18 September 2019, accessed 19 May 2020, <<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/FamilyandDomesticViolenceResponseTeam.aspx>>.

738 Department of Communities, *Family and Domestic Violence Response Team: Operating Procedures*, Western Australia, September 2017, p. 26.

739 See especially sections 2.4.2 and 3.1.3.

the effectiveness of FDVRTs was monitored and evaluated according to a (then) Department of Child Protection and Family Services framework. Performance measures included the proportion of FVIRs assessed and triaged, and the proportion of victims offered a service response by the FDVRT. While the Committee found that the FDVRTs operated reasonably efficiently,<sup>740</sup> the volume of work facing the FDVRTs was overwhelming, which had the potential to impact upon the quality of the follow-up response provided to victims.<sup>741</sup>

The Department of Communities is currently finalising the scope for a further review of the FDVRTs.

The review methodology will include analysis of data, stakeholder feedback and interstate models, to determine:

- how the FDVRT model is meeting its intended outcomes?
- What are the strengths and capabilities of the model?
- What are the risks and limitations of the model?
- What immediate operational improvements can be made to the model, in the short term?
- Next steps for service re-design.<sup>742</sup>

The final review report is expected to be completed in late 2020. The Committee looks forward to its results.

### **There are benefits to using different risk assessment frameworks**

Risk assessment frameworks are important tools for assessing the level of risk to an FDV victim. In Western Australia, when a victim has been assessed as being at high risk of serious harm, they may be subject to multi-agency case management to support them and reduce the identified risks.<sup>743</sup> The Committee has become aware that some jurisdictions support a common risk assessment framework to guide common approaches to risk assessment and management and standardise service responses across agencies. This is currently used in Western Australia and Victoria, and being developed in the Australian Capital Territory.<sup>744</sup>

However, the Integrated Response Group at Southport in Queensland highlighted the benefits to agencies using different risk assessment tools. Each agency completes a different risk assessment according to their focus, which ultimately gathers more information and produces a more rounded risk assessment. The completion of any risk assessment which

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740 Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *A measure of trust: how WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly of Western Australia, October 2015, p. 46.

741 *ibid.*, p. 57.

742 Submission 35A, Department of Communities, p. 8.

743 Department of Communities, *Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, 2<sup>nd</sup> ed., Western Australia, 2015, p. 46.

744 Ms Heidi Yates, Victims of Crime Commission (ACT), *Briefing*, 27 February 2020.

concludes that an FDV victim is at serious risk of harm will trigger an automatic response from Police.<sup>745</sup>

## **Interactions between the Magistrates Court of Western Australia and the Western Australia Police Force**

Police have an important role in responding to domestic violence incidents, providing immediate safety to FDV survivors, and potentially arresting and charging FDV perpetrators. Most of this action lies outside the scope of this inquiry. However, the Committee wishes to highlight some aspects of police work that impact or interact with the MCWA's management of matters involving family and domestic violence.

### **Provision of information to family and domestic violence victims and perpetrators**

At the first attendance at an FDV incident, Police distribute Family Violence Information and Support cards to victims.<sup>746</sup> These information cards were developed in consultation with the Commissioner for Victims of Crime, and were rolled out in 2015.<sup>747</sup> The cards provide a method of self-referral for parties involved in FDV incidents, and should prompt first responders to discuss court order options with victims.

*'Improvements in efficiency and effectiveness will best be achieved through high-level cooperation and collaboration between courts, service providers and stakeholders, including a mutual understanding of the response of the various agencies to domestic and family violence issues.'*

*— Commissioner Chris Dawson,  
Western Australia Police Force*

In 2015, the Ombudsman recommended that the Police collaborate with the (then) Department of Child Protection and Family Services and Department of the Attorney General to develop an 'aide memoir' to help police officers provide verbal information and advice to FDV victims about (now) Family Violence Restraining Orders (FVROs).<sup>748</sup>

The Police is currently in discussions with the Department of Communities about the opportunity to provide pamphlets containing information about family violence and support services for both FDV victims and perpetrators. Superintendent Leonhardt explained that the period immediately after an FDV incident is generally an emotional time for those involved, and people may be affected by alcohol, drugs, mental illness and other factors that cloud their thinking. The Police hope that leaving the pamphlets in the house may lead to someone reading them after the incident and potentially prompt some action.<sup>749</sup>

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745 Domestic Violence Prevention Centre Gold Coast Inc., *Briefing*, 28 February 2020.

746 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 3.

747 Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, Perth, 19 November 2015, p. 141.

748 *ibid.*

749 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 3.

### Recommendation 72

That the Minister for Police and Minister for Prevention of Family and Domestic Violence report to Parliament on the current status of discussions regarding the proposal that Western Australia Police Force officers leave appropriate pamphlets containing information about family and domestic violence and support services for both victims and perpetrators after attending a suspected family and domestic violence incident, or when serving any document relating to family and domestic violence.

### **Police officers need appropriate training as their response can influence a family and domestic violence victim's willingness to engage in the justice system**

The response of the Police can strongly influence an FDV victim's willingness to engage in the justice system. If a police officer does not act in response to a report of FDV or an alleged breach of an FVRO, the reporting person may be discouraged from seeking help in the future, and an FDV perpetrator may not be held accountable.<sup>750</sup> It is therefore crucial that police officers are supported through training, education and supervision.

In 2014, the Law Reform Commission of Western Australia (LRCWA) identified that police officers must have a complete understanding of the dynamics of FDV to do their jobs effectively. It recommended that all police officers receive comprehensive and ongoing training to understand the nature and dynamics of FDV.<sup>751</sup>

The Community Development and Justice Standing Committee of the 39<sup>th</sup> Parliament considered the LRCWA's recommendation and the current training undertaken by police officers in detail. It found that the 'existing family and domestic violence training received by recruits at the Western Australia Police Academy does not adequately prepare them for policing family and domestic violence effectively.'<sup>752</sup>

This Committee received evidence that police officers receive three levels of FDV-related training. All recruits participate in a four-day FDV training program at the academy, which includes scenarios based on real incidents. The Committee did not receive evidence whether this training is any different to the recruit training undertaken in 2015.

Further, all in-service officers must complete a three- to four-hour online training course intended to refresh knowledge around FDV rules, responsibilities and considerations.<sup>753</sup> As at February 2020, 84% of officers had completed the training.<sup>754</sup>

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750 Submission 12, Women's Council for Domestic and Family Violence Services, p. 6; Submission 20, Relationships Australia WA Inc., p. 3.

751 Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Project No. 104, Government of Western Australia, June 2014, Recommendation 11, p. 73.

752 Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *A measure of trust: how WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly of Western Australia, October 2015, Finding 14, p. 66.

753 Assistant Commissioner Kylie Whiteley, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, pp. 3–4.

754 Superintendent Sharron Leonhardt, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 4.



Most recently, the Police rolled out a full day in-person training course to all police officers. As at January 2020, 54% of officers have completed the training.<sup>755</sup> It was intended that all officers should complete the training by the end of June 2020, however this may have been affected by COVID-19 restrictions.

The full day course covers the dynamics of family violence and how police officers should respond, including completing incident reports. It has a particular emphasis on cultural change, so that police officers who may not deal with family violence well will change their response.<sup>756</sup>

The Committee is encouraged by the Police's cultural shift in requiring that all officers are trained to respond to family and domestic violence incidents. This approach recognises that FDV is, unfortunately, core business for police officers, and they need to be provided with appropriate skills to respond.



MR P.A. KATSAMBANIS, MLA  
CHAIRMAN

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755 Superintendent Sharron Leonhardt, Western Australia Police Force, *Transcript of Evidence*, 10 February 2020, p. 4.

756 *ibid.*



# Appendix One

## Committee's functions and powers

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The functions of the Committee are to review and report to the Assembly on:

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.



## Appendix Two

### Inquiry process

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The Community Development and Justice Standing Committee resolved to conduct an inquiry into how the Magistrates Court of Western Australia manages matters involving family and domestic violence on 14 August 2019. The inquiry terms of reference were announced by the Speaker of the Legislative Assembly on the same day and the details placed on the Committee's web page.

The Committee initially wrote to 67 stakeholders inviting submissions, and also advertised for submissions in *The West Australian* newspaper on 24 August 2019. The inquiry was announced via the Legislative Assembly's Twitter account and details were posted on The Parliament of Western Australia Facebook page. The Committee received 47 submissions, and 13 supplementary submissions (see Appendix Three).

Evidence was also gathered in 13 hearings and 15 briefings (see Appendices Four and Five). An initial briefing with Chief Magistrate Steven Heath was held before the inquiry began to assist in determining the scope of the inquiry. One of the briefings was held at the Perth Magistrates Court, where the Committee spoke with a magistrate and staff, received a tour of relevant areas of the court building, and watched Family Violence List proceedings. Six briefings were held in Melbourne, four in Canberra, two in Southport and one in Brisbane.

Due to COVID-19 restrictions, the Committee was unable to hold a scheduled hearing with representatives of the Family Court of Western Australia. Information was instead sought and received in writing. The Committee also had to cancel a planned daytrip to Geraldton to meet with representatives and stakeholders of the Barndimalgu Aboriginal Family Violence Court.

Due to ongoing restrictions, the Committee was not able to hold further hearings with representatives of the Department of Justice or Magistrates Court of Western Australia. Instead, further written information was requested and received.

The information gathered from submissions, hearings, briefings, and travel is the basis of this report. The Committee thanks all those who made contributions.



## Appendix Three

### Submissions

No.	Name	Position	Organisation
1	Closed submission		
2	Closed submission		
3	Closed submission		
4	Closed submission		
5	Closed submission		
6	Closed submission		
7	Closed submission		
8	Professor Gregory Reinhardt AM	Executive Director	Australasian Institute of Judicial Administration
9	Mr Eugene M Hyman	Judge (retired)	
9A	Mr Eugene M Hyman	Judge (retired)	
10	Chief Magistrate Steven Heath	Chief Magistrate	Magistrates Court of Western Australia
10A	Chief Magistrate Steven Heath	Chief Magistrate	Magistrates Court of Western Australia
11	Closed submission		
12	Ms Kedy Kristal	Acting Chief Executive Officer	Women's Council for Domestic and Family Violence Services
12A	Closed submission		
13	Mr Philip Cockman		
14	Closed submission		
15	Judge Julie Wager	President	Children's Court of Western Australia
15A	Judge Hylton Quail	President	Children's Court of Western Australia
16	Ms Mary Corina Martin	Chief Executive Officer	Aboriginal Family Law Services
16A	Ms Mary Corina Martin	Chief Executive Officer	Aboriginal Family Law Services
17	Mr Patrick Mungar	Managing Lawyer	Gosnells Community Legal Centre Inc.
18	Closed submission		
19	Ms Kathy Blitz-Cokis	Chief Executive Officer	Northern Suburbs Community Legal Centre Inc.
19A	Ms Kathy Blitz-Cokis	Chief Executive Officer	Northern Suburbs Community Legal Centre Inc.
20	Ms Terri Riley Mr Michael Sheehan	Chief Executive Officer Executive Director	Relationships Australia WA Inc

## Appendix Three

21	Closed submission		
22	Mr William Sloan	President	Family Law Practitioners' Association of Western Australia (INC)
23	Magistrate Deen Potter	President	The Magistrates' Society of Western Australia
24	Adjunct Professor Tony Pietropiccolo AM	Director	Centrecare Inc.
24A	Closed submission		
25	Dr Sarah Murray	Associate Professor	
26	Closed submission		
27	Mr Colin Pettit	Commissioner for Children and Young People Western Australia	
28	Closed submission		
29	Magistrate Andrée Horigan		
30	Ms Sharryn Jackson	Executive Director	Community Legal Western Australia
31	Ms Lillian Lesueur	Chief Executive Officer	National Judicial College of Australia
32	Dr Adam Tomison	Director General	Department of Justice
32A	Dr Adam Tomison	Director General	Department of Justice
32B	Dr Adam Tomison	Director General	Department of Justice
33	Ms Katalin Kraszlan	Acting Commissioner for Victims of Crime	Department of Justice
33A	Ms Katalin Kraszlan	Acting Commissioner for Victims of Crime	Department of Justice
34	Associate Professor Jill Howieson	Director	University of Western Australia Mediation Clinic
35	Ms Michelle Andrews	Director General	Department of Communities
35A	Ms Michelle Andrews	Director General	Department of Communities
36	Ms Brigita Cunningham	Executive Director/Principal Registrar, Magistrates Courts Services	Court Services Queensland
37	Ms Judith Carter	Coordinating Registrar Criminal, Adelaide Magistrates Court	Courts Administration Authority (South Australia)
38	Ms Julie Jackson	Director of Family Law	Legal Aid Western Australia
38A	Ms Julie Jackson	Director of Family Law	Legal Aid Western Australia
39	Mr Chris Dawson	Commissioner	Western Australia Police Force
39A	Ms Sue Young APM	Acting Assistant Commissioner, Operations Support	Western Australia Police Force
40	Mx Lena Van Hale	Chairperson	Living Proud LGBTI Community Services of WA
41	Closed submission		



## Submissions

42	Mr Devon Cuimara	Founder/Chief Executive Officer	Aboriginal Males Healing Centre
43	Mr David Kennedy	Manager, Koori Family Violence Court	Magistrates' Court of Victoria
44	Ms Rebecca Hicks	Manager, Education and Public Programs	Neighbourhood Justice Centre, Magistrates' Court of Victoria
45	The Honourable Justice Gail Sutherland	Chief Judge	Family Court of Western Australia
46	Ms Heather Glass	Managing Director	Japan Australia Word Services Pty Ltd
47	Closed submission		



## Appendix Four

### Hearings

Date	Name	Position	Organisation
13 November 2019	Ms Mary Corina Martin	Chief Executive Officer	Aboriginal Family Law Services
	Ms Linda Cao	Senior Lawyer	
	Ms Joanne Stampalia	Executive Director, Court and Tribunal Services	Department of Justice
	Ms Teresa Tagliaferri	Director, Court Counselling and Support Services	
20 November 2019	Chief Magistrate Steven Heath		Magistrates Court of Western Australia
	Magistrate Deen Potter	President	The Magistrates’ Society of Western Australia
	Magistrate Jennifer Hawkins	Member	
27 November 2019	Ms Kedy Kristal	Acting Chief Executive Officer	Women’s Council for Domestic and Family Violence Services
10 February 2020	Judge Julie Wager	President	Children’s Court of Western Australia
	Magistrate Andrée Horrigan		
	Ms Katalin Kraszlan	Acting Commissioner for Victims of Crime	Department of Justice
	Mr Michael Johnson	Director, Magistrates Courts and Tribunals	
	Mr Thomas Samuels	Legal Policy Officer	
	Ms Michelle Andrews	Director General	Department of Communities
	Ms Astrid Kalders	Executive Director, Children and Families	
	Ms Tanya Elson	Director, Children and Families	
	Assistant Commissioner Kylie Whiteley	Assistant Commissioner, Operations Support	Western Australia Police Force
	Superintendent Sharron Leonhardt	Superintendent, Family Violence Division	
	Superintendent Martin Cope	Superintendent, Prosecuting Services Division	
	Closed Hearing		

## Appendix Four

11 March 2020	Ms Ekaterini Blitz-Cokis	Chief Executive Officer	Northern Suburbs Community Legal Centre Inc.
	Mr Nicholas Snare	Senior Solicitor	
	Ms Sharryn Jackson	Executive Director	Community Legal Western Australia
	Ms Caroline Hannington	Policy and Projects Officer	
	Mr Rodney West	Executive Manager, Community Services	Centrecare Inc.

## Appendix Five

### Briefings

Date	Name	Position	Organisation
7 August 2019	Chief Magistrate Steven Heath		Magistrates Court of Western Australia
30 October 2019	Magistrate Deen Potter		Magistrates Court of Western Australia
	Ms Frances Pitt	A/Manager, Court Operations	
25 February 2020	Magistrate David Fanning		Neighbourhood Justice Centre, Magistrates' Court of Victoria
	Ms Rachel Powning	General Manager	
	Ms Rebecca Hicks	Manager, Education and Public Programs	
	Dr Cameron Wallace	Manager, Client Services Team	
	Ms Louise Bassett	Manager, Strategy and Innovation	
	Ms Brooke Alford	Senior Registrar	
	Mr Anthony Ket	Business Analyst	
	Ms Maya Avdibegovic	Executive Director	Court Network
	Ms Samantha Burchell	Chief Executive Officer	Judicial College of Victoria
	Ms Elanor Peattie	Senior Education Manager	
	Ms Fiona Dea	Judicial Education Manager	
	Ms Alison Macdonald	Acting Chief Executive Officer	Domestic Violence Victoria
	Ms Jennie Child	Policy Advisor	
26 February 2020	Deputy Chief Magistrate Felicity Broughton		Magistrates' Court of Victoria: Koori Court and Court Services Victoria
	Magistrate Stella Stuthridge		
	Magistrate Pauline Spencer		
	Magistrate Rose Falla		
	Ms Joanne Atkinson	Manager, Koori Court	
	Mr David Kennedy	Manager, Koori Family Violence Unit	
	Mr Robert Cotter	Acting Director, Family Violence Branch	
	Ms Stefanie Bourke	Senior Project Manager, Specialist Family Violence Courts Project	

## Appendix Five

	Ms Jaime Lott	Senior Project Officer, Koori Family Violence Unit	
	Professor Greg Reinhardt	Executive Director	Australasian Institute of Judicial Administration
27 February 2020	Acting Chief Magistrate Glenn Theakston		ACT Magistrates Court
	Ms Jayne Reece	Registrar	
	Mr Matt Kamarul	Legal Officer	
	Ms Mary Burt	Family Conferencing Unit	
	Ms Heidi Yates	Commissioner	Victims of Crime Commissioner (ACT)
	Ms Amy Bascomb	Legal and Policy Officer	
	Ms Margie Rowe	Family Violence Team Leader, Solicitor	Legal Aid ACT
	Ms Amy Begley	Family Violence Unit, Supervising Solicitor	
	Ms Dearne Weaver	Acting Chief Executive Officer	Domestic Violence Crisis Service (ACT)
	Ms Clare Sheehan	Senior Legal Advocate	
28 February 2020	Ms Rosie O'Malley	Chief Executive Officer	Domestic Violence Prevention Centre Gold Coast Inc.
	Mr Brett Lush	Men's Program and Integrated Response Coordinator	
	Ms Megan Summers	Court Coordinator	
	Ms Lucy Jacques	Team Leader, Court Advocacy Program	
	Mr Jese Norriss	Acting Domestic and Family Violence Court Coordinator	Magistrates Court of Queensland: Southport Domestic and Family Violence Court and stakeholders
	Ms Elizabeth Morgan	Acting Senior Registrar	
	Ms Jodie Woodward	Domestic Violence Court Coordinator	
	Mr Luke Fitzpatrick	Acting Senior Deputy Registrar	
	Ms Rochelle Hope	Acting Deputy Registrar	
	Ms Christina Evans	Senior Community Corrections Officer	
	Ms Annette Fulton	Child Protection	
	Ms Kristie Doyle	Senior Principal Lawyer, Legal Aid Queensland	
	Mr Gavin Reece	Senior Legal Officer, Queensland Police Prosecutions	
	Ms Ann Crookes	Area Manager, Centacare	

	Ms Lucy Jacques	Team Leader, Court Advocacy Program, Domestic Violence Prevention Centre Gold Coast Inc.	
	Ms Megan Summers	Court Coordinator, Domestic Violence Prevention Centre Gold Coast Inc.	
	Mr Bernhard Berger	Acting State Coordinator, Queensland Police Service Specialist Court Prosecutions	
	Mr Brett Lush	Men’s Program and Integrated Response Coordinator, Domestic Violence Prevention Centre Gold Coast Inc.	
	Ms Deb Phillips	Officer in Charge, Queensland Police DFV Task Force	
	Magistrate C. Pirie		
	Magistrate C. McKenzie		
	Ms Belinda Cox	Community and Partnerships Program Manager	Brisbane Domestic Violence Service
	Ms Kelly-Ann Tansley	Acting Team Leader	
	Ms Rachel Shelton	FDV Specialist	





## Appendix Six

### Glossary

ACT	Australian Capital Territory
ADR	Alternative Dispute Resolution
AFLS	Aboriginal Family Law Services
AIHW	Australian Institute of Health and Welfare
Barndimalgu Court	Barndimalgu Aboriginal Family Violence Court
BCP	Behaviour Change Program
CALD	Culturally and linguistically diverse
CCWA	Children's Court of Western Australia
CEO	Chief Executive Officer
CIP	Central Information Point
CJC	Community Justice Centre
DFV Court	Queensland's Specialist Domestic and Family Violence Courts
DFV Protection Act	<i>Domestic and Family Violence Protection Act 2012</i> (Queensland)
DVPO	Domestic Violence Protection Order (Queensland)
FCWA	Family Court of Western Australia
FDVRT	Family and Domestic Violence Response Team
Framework	International Framework for Court Excellence
FVC	Family Violence Court
FV List	Family Violence List
FVIO	Family Violence Intervention Order (Victoria)
FVIR	Family Violence Incident Report
FVPO	Family Violence Protection Order (ACT)
FV Reform Act	<i>Family Violence Legislation Reform Act 2020</i>
FVRO	Family Violence Restraining Order
FVS	Family Violence Service
ICMS	Integrated Court Management System
JCV	Judicial College of Victoria
LAWA	Legal Aid Western Australia
LRCWA	Law Reform Commission of Western Australia
Magistrates' Society	The Magistrates' Society of Western Australia
MCWA	Magistrates Court of Western Australia
MoU	Memorandum of Understanding
NJC	Neighbourhood Justice Centre
NSCLC	Northern Suburbs Community Legal Centre Inc.

## Appendix Six

PIIO	Police Interim Intervention Order (South Australia)
Police	Western Australia Police Force
Royal Commission	Royal Commission into Family Violence (Victoria)
RO Act	Restraining Orders Act 1997
ROAR	Restraining Order and Respondents Program
VRO	Violence Restraining Order
VSCWS	Victim Support and Child Witness Service
VSS	Victim Support Service
Women's Council	Women's Council for Family and Domestic Violence Services



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