

COVID RECOVERY:

PEOPLE WHO HAVE EXPERIENCED FAMILY VIOLENCE

The COVID-19 crisis has seen the rate of family violence increase across Victoria, at the same time as public health measures have placed new pressures on the legal system's capacity to process Family Violence Intervention Order ('FVIO') applications. The large and growing backlog of FVIO matters will need to be addressed through the mobilisation of, and cooperation between, community legal assistance providers, Victoria Police and the courts to ensure that access to justice is not sacrificed in the rush to process matters. Meanwhile, as the legal system transitions towards COVID Normal, it is vital to ensure that appropriate and adequate support is available to victim-survivors, including through improving the accessibility of the courts and of legal assistance services.

The 'shadow pandemic' of family violence seen around the world since the onset of COVID has also been felt in Victoria, as greater financial, employment, health and housing insecurity and social isolation measures make it easier for perpetrators to control and harm victim-survivors. The potential for elder abuse is also significant in a context of isolation as family members come under increased financial pressures. Family violence is first and foremost a safety issue – but the legal system plays a fundamental role in creating and enforcing the formal structures that keep victim-survivors safe and prevent perpetrators from causing further harm.

The legal assistance sector has worked, and continues to work, with the courts, family violence services and Victoria Police to improve access to justice for people affected by family violence, especially in the context of social distancing and remote hearing processes disrupting pathways to accessing legal assistance. Some models developed through this collaboration have considerably improved both the outcomes and administration of FVIO matters, and should be expanded and improved on through the COVID recovery period and beyond to capture more courts and more people in need.

Initiatives developed at the Specialist Family Violence Courts (SFVCs) to contact parties to proceedings and provide legal advice, and to foster early contact between legal assistance providers and police, hold particular promise in reducing demand on court resources in a safe, accountable and efficient way. These initiatives could and should be enhanced by use of a secure web-based platform on which negotiations can be undertaken and information shared. This will support efforts to reduce the large and growing court backlog across magistrates' courts. Meanwhile, some adaptations to COVID-related restrictions by the Magistrates' Court have improved the safety and accessibility of court hearings. These include much better remote/ video-conferenced access to the courts. These improvements should be retained or expanded, even after social distancing restrictions ease.



However, legal services are not yet sufficiently embedded in the family violence system to ensure that everyone who needs legal help can access it. Although improving access to assistance for victim-survivors and perpetrators of family violence has been a key area of focus for the Victorian Government in recent years, there still remains a gap in the level of legal assistance available and accessible. Where victim-survivors and perpetrators of family violence miss out on legal assistance, a crucial opportunity can be lost to intervene early and resolve disputes in a safe and fair way. For example, better access to legal assistance can help to ensure the best and most sustainable outcome of FVIO matters, to tailor orders to the needs of the parties as appropriate, to ensure that both parties understand the implications of the order. The important opportunity to identify and address other related legal issues is also missed – such as parenting arrangements, tenancy disputes, or visa issues. If unaddressed, these related issues can have a significant impact on the wellbeing of victim-survivors and their children.

While the Federation acknowledges that a number of the recommendations set out in this chapter are already receiving support from Government, it is the Federation's view that a strong, just and fair recovery must ensure that social support systems remain connected and accessible by the people who most need assistance.

BUILDING ON IMPROVEMENTS TO COURT PROCESSES AND FACILITIES

Government restrictions as part of the pandemic management plan have impacted on the ability of people to attend court in person, conduct hearings and provide the necessary court documents and evidence required for court proceedings. In response, the judicial system introduced a range of improvements to court processes and facilities. The Magistrates' Court, which hears FVIO matters, made significant progress in implementing online hearings and remote appearances by witnesses (often victim-survivors). These measures should be retained and improved to build on the progress they have made in increasing access to justice and safety at FVIO proceedings. Meanwhile, the development of pre-court engagement and referral models at Victoria's existing SFVCs have, anecdotally, resulted in improved outcomes for people involved in FVIO proceedings. Pre-court engagement has included early provision of legal advice and, in some cases, the early and safe resolution of FVIO proceedings.

These models have only been made possible through the dedicated investment in SFVCs, and further resources should be devoted to extending the critical elements of the SFVC model to courts across Victoria. The models can and should also be improved upon by a secure web-based platform on which negotiations can be undertaken and information shared. By way of example only WebEx is currently the default platform for Victorian courts and Microsoft Teams is currently the default platform for Victoria Police. We believe that both VLA and CLCs would be readily able to use either platform or another one that is agreed upon by all participants. This is especially urgent in light of the need to safely, accountably and fairly resolve the considerable backlog of FVIO matters.

ONLINE HEARINGS

The transition to online hearings has increased access to justice for some people with family violence matters before court, including some people in regional areas and people who felt unsafe attending court. In particular, remote witness facilities – which are rooms usually at courts or prosecutors' offices, equipped with facilities to allow people to give evidence via videolink – can mitigate against the retraumatising effect of participating in legal proceedings for victim-survivors by reducing the risk of coming into contact with their abuser.

It is important that the benefits of the digital court transition can be extended to as many people as possible – and that new systems do not mean the exclusion of people who are unable to access online court processes, and therefore need to attend court in person. Some people do not have the devices or capacity to use online systems, and unless in-person hearings are recommenced or initiatives are developed to cater to this cohort, they risk being disadvantaged as a result of the procedural changes.

The Federation recommends that in-person court should be retained for those who need it, including for people who cannot assess remote facilities safely, or that resourcing be provided to set up remote hearing facilities at key locations, including at CLC and Legal Aid offices to allow lawyers to assist clients to attend virtual hearings.

The Federation also recommends that remote witness facilities be expanded to ensure that as many victim-survivors as possible have access to this support, supported by a safety assessment to make sure it is safe for people to give evidence from their home. To enable evidence to be given remotely from any location requires safety assessment protocols to be urgently developed by the legal sector, courts and police.

Recommendation: Take steps to ensure that people who cannot meaningfully access online court proceedings are not excluded from the digital court transition.

Recommendation: Expand remote witness facilities, including enabling people to give evidence from home, supported by risk assessment to make sure it is safe.

INFORMATION AND EVIDENCE PROCESSES

The submission and use of information relevant to legal proceedings is highly regulated, with evidence laws and court processes dictating how and when documents and information can be exchanged between people appearing in court, their legal representatives, and court staff.

At some courts, the transition to online hearings has been supported by a new, streamlined process whereby court staff email FVIO application outcomes and orders to legal representatives. This system has resulted in efficiencies, and the Federation recommends that, at the very least, these new processes should be retained and expanded to all courts not currently operating in this manner. Ideally, as set out above, the courts, the legal assistance sector and Victoria Police should agree on a secure web-based platform for the sharing of this information.

Recommendation: Retain the new, streamlined processes for exchange of documents and FVIO application outcomes between court staff and legal representatives.

CLIENT-FOCUSED REFERRAL PROCESSES

Specialist Family Violence Courts (SFVCs) have been set up at five pilot locations across Victoria over 2019 and 2020, in response to recommendations made by the Victorian Royal Commission into Family Violence. The community legal assistance sector has been closely involved in the development and implementation of the SFVCs, including by developing a special model for the delivery and allocation of legal services to people with matters at SFVCs.

Since the onset of COVID-19, legal services are witnessing the way in which SFVC locations are employing integrated and innovative practices to respond to client needs and attempt to address court backlog through early intervention. SFVC locations have been better placed to quickly implement client-focussed processes to facilitate referrals to duty lawyer services including for pre-court assistance, due to having significantly higher numbers of lawyers providing services at these courts, amongst other things.

For example, the Ballarat and Shepparton SFVCs now enable the provision of legal advice by community duty lawyers before the first date at which people are required to return to court. This has the dual purpose of ensuring that legal advice is provided at the earliest opportunity and reducing the number of parties attending court. Legal assistance services have received very positive feedback from clients about the SFVC pilots. This process has allowed the duty lawyer services to assist more clients before their court day and has also minimised delays on the day.

At the Frankston SFVC, a model for police-led referrals has been established. Many FVIO applications are made by Victoria Police (instead of the victim-survivor). In Frankston, Victoria Police now refer victim-survivors to legal assistance approximately two weeks before they are due to appear in court for their first hearing date. This model encourages and enables victim-survivors, people using family violence, legal services and police to negotiate the matter prior to court. In cases where all parties can be reached this often leads to the resolution of the matter prior to the court hearing. For matters that are not able to be resolved, this model presents both parties with an opportunity to understand the other's position and potentially resolve some areas of dispute. In both situations, the demand on court time is reduced – but more legal assistance and police resources are required.

The development of these models has only been made possible because legal services have been specifically funded to provide services under the SFVC Legal Practice model that includes pre-court, at court and post-court assistance. Investment to support SFVCs at more locations can be expected to deliver significant returns, both in terms of improved safety for victim-survivors but also in terms of justice system costs. The Federation recommends that the SFVC framework be implemented at all Magistrate's Courts across Victoria, including the adequate resourcing of community legal assistance services to deliver holistic support.

A less intensive, but nonetheless effective, warm referral process has been adopted by some non-SFVC Magistrates' Courts. The Magistrates' Court has introduced a new system where people who present at or phone the court regarding FVIO matters are given the option of a warm referral to a duty lawyer legal service. This means that people's contact details are provided to legal services (if they consent), who can then contact them in the lead up to their court date – proactively reaching people with legal need, rather than placing the onus on often-vulnerable people to find legal assistance.

The Federation recommends that this warm referral process is retained after COVID-19 restrictions are eased to encourage pre-court engagement and improve access to legal assistance for people who need it. The process must be followed, as set out in the practice directions provided to all Magistrates' Courts across Victoria, to ensure consistent use of the referral system.

Recommendation: Expand the Specialist Family Violence Court framework across Victoria, including adequate resourcing for legal assistance services.

Recommendation: Retain the warm referral process at non-SFVC Magistrates' Courts, pending the expansion of the SFVC model.



INTEGRATING LEGAL SERVICES INTO THE FAMILY VIOLENCE SUPPORT SYSTEM

A fundamental part of safely and fairly addressing instances of family violence is the provision of accessible legal assistance services, especially to vulnerable people who are likely to be facing other legal problems. As we enter the COVID recovery period, it is crucial to ensure that improving access to legal services is a key part of the ongoing efforts to respond to the increased rates of family violence caused by the pandemic.

THE ORANGE DOOR HUBS AND INTEGRATED LEGAL SERVICES

The Orange Door hubs are a free service for adults, children and young people who are experiencing or have experienced family violence and families who need extra support and are intended to bring together the key services they may require to stay safe.

However, the recent Victorian Auditor-General's Office (VAGO) report on managing Support and Safety Hubs and the first Family Violence Reform Implementation Monitor (FVRIM) report to the Victorian parliament states that the scale and pace of change required was not fully recognised in the implementation of the first five hubs, resulting in service coordination not yet being consistent or effective.

One example of this is the lack of a consistent model for the state-wide integration, connection and funding of legal services to The Orange Door and specialist family violence services. While, over time, ad hoc local arrangements have evolved for legal services to deliver some assistance to hub clients, the level and availability of legal help is not consistent across hub sites, and the lack of a cohesive process for linking clients with legal services contradicts the wraparound purpose of the hubs.

The Federation recommends that the Victorian Government use the opportunity provided by the COVID recovery response to support the integration of legal services into the family violence system across the state.

Recommendation: Support the integration of legal services into the family violence system.