

Aboriginal Community Controlled
Culturally Safe
Prevention of Family Violence
Legal Services and Holistic Support
Cultural and Wellbeing Workshops
Policy and Advocacy



18 July 2024

Susan Templeman MP
Chair
The Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Ms Templeman,

Inquiry into Family Violence Orders

Djirra welcomes the opportunity to input into the Inquiry into Family Violence Orders (FVOs).

Djirra is a specialist Aboriginal Community Controlled Organisation (ACCO) with 21 years' experience accompanying Aboriginal women, and their children, on their individual journeys. We find solutions through Aboriginal women sharing their stories, journeys, and experiences. We are committed to a future without family violence.

Djirra delivers holistic, culturally safe, specialist family violence legal services and case management support, alongside cultural and wellbeing workshops and programs. Our services have state-wide reach, touching every part of Victoria to meet the needs of Aboriginal women. Self-determination is the foundation of everything we do. Djirra amplifies the voices of Aboriginal women and advocates for system-wide change to improve access to justice, eliminate systemic violence, and strengthen women's resilience.

Djirra is an active member of the First Nations Advocates Against Family Violence (formerly known as the National Family Violence Prevention and Legal Services Forum), the peak body for Aboriginal people who are experiencing or at risk of family violence.

Djirra's legal service practices in the areas of family law (parenting and divorce), family violence intervention orders, child protection and victims of crime compensation. As such, our lawyers routinely provide advice and representation in relation to family law and FVO matters, including advice on how these matters interact with each other. They regularly appear in the Federal Circuit and Family Court of Australia (FCFCOA) in Melbourne, Dandenong, and on circuit, as well as in the various Magistrates' Courts throughout Victoria.

Our paralegal support workers (PLSW) provide wraparound emotional and practical support to clients throughout the Court process, including attending alongside women at hearings or at police stations, and with making referrals.

Djirra provides our response to the substantive Terms of Reference of this Inquiry below. We summarise our key recommendations as follows:

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1. Government must substantially increase investment in Aboriginal-led specialist family violence prevention and legal services, such as Djirra, to support women experiencing family and sexual violence to navigate the family law and FVO systems.
 2. Government must recognise that integration of FVO and family law jurisdictions will disadvantage Aboriginal women and likely delay access to safety, while also diluting the specialisation of each jurisdiction. Rather, we recommend more structured connections between the Family Courts, State and Territory Courts and FVO processes, and specialist culturally safe family violence legal services. In this regard, we strongly urge the Government to consult with and invest in Djirra to provide specialised culturally safe support and legal services at every FCFCOA location in Victoria.
 3. The FCFCOA must continue to work with services like Djirra to strengthen the Indigenous List. This includes considering how the list may benefit from the learnings of other specialist family violence courts and lists (including the Evatt List).
 4. Government must invest in sector wide reform that ensures that Aboriginal-led specialist family violence prevention and legal services, such as Djirra, are a core part of the initial and ongoing response to family violence, to ensure that women are better supported in obtaining and enforcing FVOs.
 5. Relevant law bodies and courts must make available training for legal practitioners and judicial officers who work in FVO, child protection and family law jurisdictions, so that each understands the other jurisdiction, and how the jurisdictions interact.
 6. Federal, State and Territory police services must make available training for police members, to equip them with understanding of the intersection between FVO, child protection and family law jurisdictions and their role in enforcing FVOs that arise in other jurisdictions.
 7. The Government must invest in centralised, real-time reporting of family and sexual violence perpetrated against First Nations women and children. This includes investment in data sovereignty and capability building within ACCOs, particularly specialist family violence prevention and legal services like Djirra.

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

Djirra's frontline teams regularly assist women who face a heightened risk or an escalation of family violence from their ex-partners during Family Court proceedings. In our experience, this risk is not fully appreciated by judicial officers in the FCFCOA, who can minimise the significant of evidence of past family violence and instead preference the fast establishment of a co-parenting relationship.

Often the commencement of FCFCOA proceedings is the first point of reconnection between parties since separation. The proceedings require both parties to file documents justifying the orders that they are seeking. In Djirra's work with mothers who experience family and sexual

violence, women are required to recount their experience of past or current violence and to outline the risks they consider the father continues to pose to them and their children's safety. The parties must read and respond to the allegations made by the other, and encounter each other at court hearings, child expert appointments and/or during changeovers. This process retraumatises the women we support.

Djirra's experience is that Aboriginal women and children endure very hostile and aggressive interactions during changeovers, where women are subjected to various forms of abuse often witnessed by the children. Most particularly, we see women experience:

- Emotional abuse, often regarding the allegations made in court documents; and
- Coercive control and systems abuse, often where fathers seek to pressure mothers into agreeing to increased spend time arrangements.

Our case management team reports that they often assist women to create safety plans to navigate encountering the perpetrator at court or at changeover.

Courts must better recognise and respond to the increased risk of escalation of violence during FCFCOA proceedings. This is particularly when considering orders for contact between parties and children. Courts must also take additional measures to identify and address vexatious litigants and systems abuse across both the state FVIO and family law systems. This includes proactively applying existing legislation such as s102QB under the *Family Law Act 1975*.

2. Current barriers for litigants in the family law system to obtain and enforce FVOs

Barriers to Obtaining FVOs

Under the current system in Victoria, FVOs are obtained either by Victoria Police (VicPol) or by victim survivors. At Djirra, we regularly assist clients to apply for FVOs in circumstances where they do not feel safe seeking assistance from VicPol, or where they have tried and been denied assistance from VicPol. We also provide representation for clients in circumstances where VicPol have made the application to protect our clients.

In our work, women tell us that VicPol regularly minimise or do not believe their allegations of violence, refuse to take their statements, fail to investigate or pursue their perpetrators, and refuse to apply for FVOs for their protection. VicPol's reluctance to assist Aboriginal women experiencing family violence and take on the role of the applicant in FVO proceedings, means that women must apply for protection themselves. As the applicant, women risk their safety in preparing evidence and facing their perpetrators at court hearings. In our experience, applications applied for by VicPol are also given greater weight by Magistrates when making FVOs and by the FCFCOA when making parenting orders.

When Aboriginal women report violence to VicPol, they risk being misidentified as the primary aggressor. Devastating consequences can result from this. Djirra has supported women who have reported violence to VicPol, only to be issued with a warrant for their arrest, often over poverty-related offending such as unpaid fines. In reviewing a sample of Djirra's casework, at least 24% of the women we supported in 2023 had been misidentified as perpetrators of violence by police. Misidentification leads to criminalisation, incarceration, and is a major contributor to the removal of children. It also impacts women's access to housing and employment.

It is critical that culturally safe, specialist family violence legal services, such as Djirra, are available to all Aboriginal women seeking support. In just the last year, demand for Djirra's services grew by 33% compared with the previous 12 months, while the first quarter of 2024 saw a further 22% increase in demand.

Despite our expertise, and the high demand for our services, we are chronically under-resourced. As Dr Mundy reports in his Independent Review of the National Legal Assistance Partnership, FVPLSs are the worst funded of the four legal assistance providers across the country. For too long, limited funding and funding uncertainty has put Aboriginal women's safety and lives at risk.

We call upon this Inquiry to urgently recommend a substantial increase in investment to specialist family violence prevention and legal services, like Djirra, to expand our holistic service offering for all Aboriginal women experiencing family violence and navigating the family law system.

Barriers to Enforcing FVOs

In our work, we regularly see instances of family violence ignored by VicPol where that violence is connected to co-parenting or FCFOCA orders. Coercive control, psychological and emotional abuse, systems abuse, and cultural abuse are common forms of violence used by perpetrators in the context of post separation parenting negotiations and arrangements.

VicPol regularly fail to recognise that an incident of violence can involve both parenting matters and FVO matters. The presentation of a parenting dispute does not relieve Police of their duty to promote and enforce the safety of women and children.

Client Example

Djirra's legal service acted for a mother in both family law and FVO proceedings. Interim Parenting Orders made in the FCFOCA provided for the children to live with the mother and spend each alternate weekend with their father. An FVO made in the Magistrates' Court prevented the father from communicating with the mother, except where the communication related to parenting arrangements, so long as he did not commit family violence in doing so.

With this FVO in place, the father was relentless in sending text messages to the mother, [REDACTED] The majority of messages were unrelated to parenting and were clearly intended to inflict emotional abuse and coercive control over the mother. The content and sheer volume of messages was distressing for our client to receive, however, she could not simply block the father's number as she was required to engage in co-parenting under the Interim Parenting Orders.

Our client reported the text messages to police, stating that they were causing her significant distress and fear for her and her children's safety. She brought screenshots of particular messages and a report evidencing the large volume of messages received. The police officer barely looked at the mother's evidence, refused to take her statement and told her, "This is a family law matter, there is nothing we can do but you should speak to a family lawyer." Our client, and the PLSW who accompanied her to the police station, attempted to explain to the police officer that the father was using the FVO exception and the existence of family law proceedings to perpetrate further violence against her. However, the police officer stood firm and refused to take our client's statement citing that it was a family law matter only.

Consequently, Djirra recommends:

- Specific training for police, to equip them with understanding of the intersection between FVO, child protection and family law jurisdictions and about their role in enforcing FVOs that have been made in other jurisdictions. Given the urgency and prevalence of violence perpetrated against women, we seek that this training is expanded and mandated for all new and existing officers.
- Additional training for legal practitioners and judicial officers who work in FVO, child protection and family law jurisdictions, so that each understands the other jurisdiction, and how the jurisdictions interact.
- More funding for the legal assistance sector, particularly in family law, as well as other culturally safe, wrap-around supports for Aboriginal women that experience family and sexual violence navigating the family law system.
- Sector wide reform that ensures that Aboriginal-led specialist family violence legal services are a core part of the initial and ongoing response to ensure that women are better supported in obtaining and enforcing FVOs. Early access to legal advice is an early intervention and prevention strategy.

3. How FVOs could be more accessible for victims of violence going through the family law system

We note that the Australian Law Reform Commission's 2019 Report into the Family Law System, and ANROWS (in its 2020 submission to the Inquiry into the Family Law System) recommended structural reform so that victims could address their legal needs in one place and therefore limit their contact with the person using violence.

While integrating systems in this way may have advantages, **Djirra's frontline workers are clear that this will not address the unique disadvantages faced by Aboriginal women and will likely lead to potentially harmful results.**

Parenting arrangements and family violence are complex areas of law determined by different courts that serve different, if related, functions. Commonly, the Magistrates' Court must act quickly to make orders to protect safety while the FCFCOA must more thoroughly analyse the issues and seek independent evidence, before making orders that will affect children until the age of 18. In our view, the merging of these two functions will have multiple unintended consequences, including having the potential of delaying access to safety and diluting the specialisation of each jurisdiction.

Further, if FVO and parenting proceedings became integrated, this will likely result in circumstances where the safety of women and children is weaponised in the process of negotiating parenting orders. Any system that places pressure on parties to settle can be exploited, and in our work, we see Aboriginal women and children consistently disadvantaged by systems that should protect them.

We welcome the FCFCOA's commitment to improving outcomes for women who have experienced or are experiencing family violence when they use the Court. Initiatives such as the Lighthouse Program, Family DOORS Triage, the Evatt List and the Family Advocacy and Support Services (FASS) aim to promote safety and provide additional support for court users, predominantly women, who have experienced family violence. However, these initiatives are



not accessible to all court users and lack cultural safety. Djirra is also concerned that Aboriginal women who need the support of the specialised Evatt List then miss out on the elements of cultural safety and support provided by the Indigenous List. It should not be one or the other. This is an area where greater work must occur and be invested in. Past investment has focused on mainstream initiatives which do not address the disproportionate disadvantage Aboriginal women face when accessing support, including from the FCFCOA.

The overwhelming majority of people who use violence against Aboriginal women in our family law practice are non-Aboriginal men. For instance, 73% of our family law clients had non-Aboriginal ex-partners in 2023. This is starkly higher than in our other areas of practice. In Djirra's work supporting women in family law proceedings, we see non-Aboriginal men exploiting racist systems to perpetrate further family violence against our women. This regularly leads to unjust outcomes for Aboriginal mothers.

We recommend that the FCFCOA develop structured connections between the Family Courts, State and Territory Courts and FVO processes, and specialist culturally safe family violence legal services. For example, when mothers are referred to FASS, when a notice of risk identifying family violence is filed, when a DOORS questionnaire highlights violence, or if a mother otherwise discloses family violence during assessment interviews, they should be immediately referred to Aboriginal-led family violence prevention and legal services like Djirra who can assist them with safety planning and applying for a FVO if needed. We also strongly urge the Government to consult with and invest in Djirra to provide specialised culturally safe support and legal services at every FCFCOA location in Victoria.

Djirra lawyers create culturally safe spaces for clients to tell their story, to feel heard, respected and understood. They also connect the women we work with to a wider range of holistic supports such as counselling, 1:1 support and material aid. Our lawyers acknowledge the unique cultural backgrounds and experiences of our clients, to ensure they are empowered to make decisions in relation to their children and safety. Culturally safe legal advice and representation for Aboriginal women with experience of family and sexual violence is crucial for promoting trust and full participation in the court process.

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

States and Territories must take a coordinated approach to respond to family violence and the enforcement of FVOs. National Cabinet should agree on uniform FVO legislation, including definitions of family violence across Australia. For example:

- There are inconsistencies between jurisdictions about the definition of family violence.
- The current fragmented system fails to protect Aboriginal women and children from violence or to hold perpetrators to account. This is particularly true in border towns. FVOs or warrants for arrest are not being served on perpetrators who deliberately cross the border out of Victoria. These actions and investigations are stalled due to little cooperation between the police services of each state, and so perpetrators can avoid arrest and continue inflicting family violence from interstate.

There is also a need for a central mechanism for the collection and reporting of data to enable a more comprehensive and complete understanding of the patterns of violence within each jurisdiction. Alongside this, First Nations data sovereignty is key to making us visible, and to



our self-determination. The current inadequate data collection and reporting systems are confined to “counting” and focus on deficits. This does not tell our story. Instead, it limits our ability to articulate the self-determined solutions that we know deliver effective healing, prevention and early intervention. It limits our ability to explain how we, at Djirra, equip our women with the knowledge and ability to stay safe, resilient, strong in Culture and identity, and to access information, advice and assistance as required.

We seek that this Inquiry recommend Governments invest in real time reporting of family and sexual violence perpetrated against First Nations women and children. Consistent with the recommendations of the Productivity Commission’s review of Closing the Gap (2024), we also encourage this Inquiry to recommend that Governments invest in data sovereignty and capability building within ACCOs, particularly specialist family violence prevention and legal services like Djirra.

We thank you for your time and consideration. Should you have any questions or wish to discuss the matter further, please do not hesitate to contact [REDACTED] Director of the Office of the Chief Executive Officer [REDACTED]

Yours faithfully,



Antoinette Braybrook AM
CEO