PROFESSIONAL STAKEHOLDERS' VIEWS OF THE *FAMILY VIOLENCE ACT 2016* (ACT)

HAS LAW REFORM ACHIEVED ITS PRIMARY AIMS?

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The Family Violence Act 2016 *(ACT) represents the Australian Capital Territory government's legislative response to issues of family violence ('FV'). While the Act aimed to better safeguard those experiencing FV, it is yet to be seen whether those amendments are effective and/or operating as intended. Through interviews with a range of professional stakeholders working at the coalface of FV issues, this paper shows that, while some improvements have been made, there remain issues with the ambiguity of provisions, the scope of the people and abusive behaviours protected under the Act, the lack of police enforcement, information-sharing and inter-agency communication, and adequate resourcing. Suggestions are made for improving the Act and its implementation.*

I INTRODUCTION

Protection orders — known by various terms, including family violence ('FV') orders ('FVOs') and domestic violence ('DV') orders ('DVOs') — are the primary mechanism in each of Australia's eight jurisdictions' system-based response to domestic and family violence ('DFV'). Legislation of this nature began to be enacted in the early 1980s by each of the eight states and territories, with the

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primary aim of providing persons affected by FV[1] with a protective remedy.[2] Legislative frameworks have varied and continue to differ from jurisdiction to jurisdiction; however, one commonality is that all such laws are fluid, marked by multiple rounds of amendments.[3]

The ability of protection orders to provide safety is questionable and subject to critique.[4] Some argue that civil legislation's efficacy is limited, as it perpetuates a differentiation of violence in the home from that in the public sphere, constructing the former as a counterpoint to 'more serious' forms of violence, thereby illustrating 'the continuing relevance of gender to the issue'.[5] Both its effectiveness and ability to protect are also limited by statutory indeterminacy or doctrinal 'weakness', which is conducive to discretionary implementation by police and magistrates, who may be 'unconstrained in invoking their own beliefs and assumptions about domestic violence'.[6]

In this article, although these latter issues are not revisited, the efficacy of the latest FV legislative iteration in one Australian jurisdiction is examined in detail: the *Family Violence Act 2016* (ACT) ('*FVA*' or 'the Act'), which was passed in August 2016 and took effect in May 2017. Permeating the *FVA* and highlighted in its Preamble is the recognition that FV 'is best addressed through a coordinated legal and social response of assistance to victims'.[7] After several homicides in 2015, most notably Tara Costigan, who was killed by her former partner only a day after

1 We recognise that there is critique of the term 'victim', with some preferring the term 'survivor', 'person with lived experience of violence', 'person in need of protection' or 'affected person'. We use the term 'affected person' in this article, as that is the terminology used under the *Family Violence Act 2016* (ACT) ('*FVA*') to refer to a 'person against whom family violence has been, or is likely to be, committed': at Dictionary (definition of 'affected person'). However, we use the term 'victim' when quoting from the literature or a research participant.

2 Karen Wilcox, 'Recent Innovations in Australian Protection Order Law: A Comparative Discussion' (Topic Paper No 19, Australian Domestic and Family Violence Clearinghouse, 2010) 22. Orders are more commonly issued in Australia than Canada, the United States or the United Kingdom and have been central to the development of responses by activists and reformers and the crucial role of police (and the state) in the protection order application process.

3 Renata Alexander, *Family Violence in Australia: The Legal Response* (Federation Press, 2018).

4 See, eg, Heather Douglas and Heather Nancarrow, 'Perils of Using Law: A Critique of Protection Orders to Respond to Intimate Partner Violence' in Holly Johnson, Bonnie S Fisher and Véronique Jaquier (eds), *Critical Issues on Violence against Women: International Perspectives and Promising Strategies* (Routledge, 2015) 77; Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave Macmillan, 2019).

5 Heather Douglas and Lee Godden, 'The Decriminalisation of Domestic Violence: Examining the Interaction between the Criminal Law and Domestic Violence' (2003) 27(1) *Criminal Law Journal* 32, 42.

6 Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court: The Implementation of Feminist Reforms in Civil Proceedings* (Cambria Press, 2008) 54.

7 *FVA* (n 1) Preamble para 1(d).

she took out what was referred to then as a DVO against him,[8] the Australian Capital Territory ('ACT') government was prompted to examine the DV legislation then in operation, the *Domestic Violence and Protection Orders Act 2008* (ACT) ('*2008 Act*').[9]

Our aim is to see whether, from the experiential lenses of those who work at the coalface, the legislation has been successful in achieving its stated aim of giving 'paramount consideration to the safety and protection of the affected person and any child directly or indirectly affected by the [violence]'.[10] Have the expanded definition of FV, attempted simplification of the application processes and added capacity for police to apply after hours for orders proved to work effectively? In addition, is there adequate coordination of services and satisfactory inter-agency communication?

To respond to these questions, we look first at the background and specific changes to the legislation in the ACT. Next, we explain how the views of legal and other service providers, government and non-government agencies, and mainstream and intersectional representatives who had some involvement with the *FVA* in their roles in the justice, FV and/or government department sectors[11] were obtained. Then, the triangulated findings about definitional changes, other potential legislative reform, issues concerning the implementation of the *FVA* by police, lawyers and the courts, information-sharing and inter-agency cooperation from different perspectives are provided.

By analysing the experiences, observations and ideas for improvement of those working at the coalface, we identify what appears to be working in this space and what seems not to be particularly effective. Suggestions are offered with the hope of assisting governments around the globe to better protect persons affected by FV. As violence against women in Australia is on the rise during this most exceptional time of the COVID-19 pandemic and its aftermath,[12] there is accordingly an

8 See, eg, Veronika Cox, 'The Tara Costigan Foundation's First Angel', *HerCanberra* (online, 16 June 2015) <http://hercanberra.com.au/cplife/the-tara-costigan-foundations-first-angel>; Christopher Knaus, 'Marcus Rappel to Stand Trial for Axe Murder of Tara Costigan', *The Canberra Times* (online, 15 September 2015) <https://www.canberratimes.com.au/story/6061419/marcus-rappel-to-stand-trial-for-axe-murder-of-tara-costigan>; Megan Gorrey, 'Marcus Rappel Pleads Guilty to Murder of Tara Costigan', *The Canberra Time*s (online, 3 March 2016) <https://www.canberratimes.com.au/story/6052869/marcus-rappel-pleads-guilty-to-murder-of-tara-costigan>.

9 See generally Melissa Gibb and Patricia Easteal, 'Defining Domestic Violence in Protection Order Legislation: A Pilot Observational Study in the ACT' (2015) 40(2) *Alternative Law Journal* 113.

10 *FVA* (n 1) s 36.

11 In the ACT, a government department is referred to as a 'directorate', eg the Justice and Community Safety Directorate.

12 See, eg, Amanda Taub, 'A New Covid-19 Crisis: Domestic Abuse Rises Worldwide', *The New York Times* (online, 6 April 2020) <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>; Kim Usher et al, 'Family Violence and COVID-19: Increased Vulnerability and Reduced Options for Support' (2020) 29(4) *International Journal of Mental Health Nursing* 549.

urgency in translating research such as that provided in this article into effecting improvements in how those affected by FV are dealt with by the criminal justice system.

II BACKGROUND: ABOUT THE *FVA*

Tara Costigan's death was the impetus for three inquiries, which investigated how the ACT was dealing with DV.[13] Each referred to recommendations made by the 2010 report by the Australian Law Reform Commission ('ALRC') and New South Wales Law Reform Commission ('NSWLRC'), *Family Violence: A National Legal Response* ('*National Legal Response*'),[14] about changes that could be made to improve the different legislative frameworks of the various states and territories. All of these inquiries recommended that the *2008 Act* be reformed. Released publicly in May 2016, these documents have been referred to as providing 'a map for reform in the ACT'.[15]

The *FVA* implemented 22 recommendations from the ALRC and NSWLRC's *National Legal Response*. According to debate in the ACT Parliament when the legislation was being considered, these recommendations addressed the context and principles governing the Act's operation; the process of applying, making and reviewing interim FVOs, final FVOs and after-hours orders; the effect of FVOs and the conditions attached to those orders; and national recognition of FVOs.[16]

The reforms were geared to ensuring the 'safety and protection of people, including children, who fear, experience or witness family violence'.[17] Key changes intended to achieve this goal included replacing the term 'domestic violence' used in the *2008 Act* with 'family violence'. This intentionally added breadth, by including all types of domestic, family and sexual violence.[18] The altered definition includes sexual violence or abuse; emotional, psychological and economic abuse; coercion or other behaviour that controls or dominates a person and causes them to fear for

13 Domestic Violence Prevention Council, *Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the Australian Capital Territory* (Public Report, May 2016); Office for Women (ACT), *ACT Domestic Violence Service System* (Final Gap Analysis Report, May 2016); Laurie Glanfield, *Report of the Inquiry: Review into the System Level Responses to Family Violence in the ACT* (Report, April 2016).

14 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response* (ALRC Report No 114, NSWLRC Report No 128, October 2010) ('*National Legal Response*').

15 Standing Committee on Justice and Community Safety, Parliament of the Australian Capital Territory, *Report on Inquiry into Domestic and Family Violence: Policy Approaches and Responses* (Report No 6, August 2019) 64 [7.5], quoting Australian Capital Territory Government, *ACT Government Response to Family Violence* (Report, June 2016) 3.

16 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 2 August 2016, 2093 (Jeremy Hanson).

17 *FVA* (n 1) s 6(b).

18 For example, in the context of sexual violence, using control or coercion to force a person to masturbate or forcing them to perform other sexual activities without their consent.

their safety or wellbeing, such as property damage, stalking, or harming an animal; and any behaviour that causes a child to hear, witness or otherwise be exposed to FV.[19] In addition, definitions and examples of 'economic abuse' and 'emotional or psychological abuse' are included in the *FVA*.[20] The definition of 'relative' was also broadened to include 'someone with whom the person has a family-like relationship' and includes a definition of what this means, with an example relating specifically to the relationship between a person with disability and their carer.[21]

The provisions in respect of 'general' interim orders[22] largely replicate those under the *2008 Act*. However, other central reforms aimed to simplify, streamline and provide flexibility about the matters to be considered in making an FVO[23] and

19 See *FVA* (n 1) s 8 for the definition and examples. The Act removed conduct that is harassing or offensive, as it is covered by the more general 'emotional or psychological abuse' and 'threatening behaviour': at ss 8(1)(a)(iii), (v). It also introduced a subsection that defines family violence as behaviour that causes 'a child to hear, witness or otherwise be exposed to' FV: at s 8(1)(b).

20 Ibid s 8(3).

21 Ibid s 11(1)(c)(iv).

22 Ibid ss 20–9. General interim orders apply in cases where a final order has not been made, there is no consent order and there are no related criminal charges to make the order a 'special' interim order. This sets out the framework for a temporary order, which remains in place until a final decision is made by the Magistrates' Court. All interim applications are heard by a registrar or magistrate, at which time the affected person will need to explain why they fear for their safety and who they are afraid of. The Court will make an interim order if satisfied that there is an immediate need for it. An interim order takes effect after the police have served a copy of it on the respondent. After the Court has made an interim order, it will allocate a conference date. During the conference, the affected person and respondent to the order are placed in different locations and the Deputy Registrar seeks to facilitate an outcome. The possible outcomes are that:

- both parties agree to final orders, which are enforceable by the police: at ss 34–5;
- both parties agree to an undertaking by the respondent: at s 64. This is a formal promise to the Court, but a broken undertaking cannot be enforced by the police;
- the parties cannot agree. In such circumstances, the Court will list the matter for a hearing before a magistrate: at s 51;
- the respondent does not attend the conference. The matter may be listed for the same day to consider making a final order (ex parte, ie the respondent is not present): at s 54; or
- the applicant (the affected person) does not attend court. In such circumstances, the application may be dismissed and any interim order may no longer be in operation: at s 53.

Final orders generally last for up to two years, although they can be longer if the Court is satisfied 'there are special or exceptional circumstances that justify a longer period': at s 35(1)(c). If an affected person applies for an extension of a final order, there is a presumption in favour of extension unless it is no longer deemed necessary by the Court: at s 86(1). See also 'Do You Need Protection from Violence?', *ACT Magistrates Court* (Fact Sheet, June 2019) <https://www.courts.act.gov.au/_data/assets/pdf_file/0012/1377795/Do-you-need-protection-from-violence-ACT-Magistrates-Court-June-2019.pdf>.

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

numerous process changes were implemented, to broaden who, beyond the affected person, can apply for or initiate an order. In particular, the *FVA* introduced 'special interim orders', adopting a recommendation from the ALRC and NSWLRC's *National Legal Response*. This provides the Magistrates' Court with the power to make such an order when an individual has been charged with a related criminal offence any time before the FV proceeding is finalised or if the defendant is found guilty of the offence.[24] This gives the Court 'flexibility in identifying and responding to safety risks to a person affected by [FV]'.[25] These orders do not have an expiry date per se, as the Court does not decide the application for the final order until the charges are finalised.[26] Where the respondent to a general interim order is charged with a related offence after the general interim order has been made, the general interim order will be taken to be a special interim order,[27] to allow 'for flexibility where criminal and civil matters progress under differing timeframes'.[28]

In addition to magistrates and their issuing of special interim orders, the police remain allowed to act as applicants in FVO proceedings.[29] The major change relating to police as applicants is that under s 99 of the *FVA*, they may apply to a judicial officer for an after-hours FVO ('AHFVO'). Under s 100, a judicial officer may make an AHFVO if satisfied it is necessary to ensure the safety of an affected person or prevent substantial damage to their property and it is not practicable to arrest the respondent for an FV offence. However, the Explanatory Statement explains that when ACT Police attend

> a scene where violence has occurred [they] will need to give consideration to the appropriateness of a criminal response prior to considering a civil application. In circumstances where a criminal offence has occurred, the appropriate response is for the alleged offender to be arrested and charged.[30]

Accordingly, an AHFVO should only be used by the police where their pro-arrest powers are not engaged and provides 'a responsive tool for ACT Policing to use only when immediately necessary to keep an affected person safe until an application can be prepared and heard in the usual way'.[31]

24 *FVA* (n 1) s 112(1). This section states that '[i]n a family violence proceeding, the court may make an interim order against the defendant if the court is satisfied that a court may, if it were acting on an application for a final order, make an interim order against the defendant'.

25 Explanatory Statement, Family Violence Bill 2016 (ACT) 30 ('Explanatory Statement').

26 *FVA* (n 1) ss 30–2.

27 Ibid ss 26–7.

28 Explanatory Statement (n 25) 14.

29 *FVA* (n 1) ss 16(2)(a), 16B. Under s 68 of the *Domestic Violence and Protection Orders Act 2008* (ACT) ('*2008 Act*'), police could apply for an 'emergency order'.

30 Explanatory Statement (n 25) 28, quoting Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 24 September 1998, 2138 (Gary Humphries, Attorney-General).

31 Explanatory Statement (n 25) 28.

III METHODOLOGY

In 2019, we undertook a review of the *FVA* on a consultancy basis on behalf of the ACT government.[32] The principal method for the review was qualitative consultation with 38 professional stakeholders. The stakeholders targeted for consultation by the government were representatives of government agencies and government and non-government service providers with direct and/or indirect involvement in the operation of the Act.

Thirty-seven organisations, agencies and government agencies (some with multiple individuals identified) were contacted by email. This email included a request to contact the research team directly if they were willing to participate and/or invite relevant staff members to do so. Accordingly, managers passed the invitation on to relevant staff members, who then contacted the researchers directly.

Thirty-three interviews and written submissions were obtained, representing 27 of the targeted organisations. The interviews were conducted in September and October 2019, with an average time of one hour per interview. They were primarily carried out face-to-face (n=30) in the interviewee's workplace, with five completed on the telephone and three providing a written response.

In total, 38 individual professional stakeholders were consulted.[33] They comprised:

a) Directorate (refers to an ACT government directorate representative):
- Directorate#1, 15+ years' work experience
- Directorate#2, 35+ years
- Directorate#3, 15+ years
- Directorate#4, several years
- Directorate#5, 1 year

b) FVW (refers to FV organisations that represent the women's sector):
- FVW#1, 10+ years' work experience
- FVW#2, 15+ years
- FVW#3, 5+ years
- FVW#4, many years
- FVW#5, 15+ years
- FVW#6, several years

c) FVNW (refers to FV services that are not part of the women's sector):
- FVNW#1, approximately 10 years' work experience

32 Lorana Bartels, Patricia Easteal and Shannon Dodd, *Review of the Implementation of the Family Violence Act 2016 (ACT)* (Report, 14 December 2020). Ethics approval was received from the Australian National University Human Research Ethics Committee (Protocol 2019/410).

33 At the participants' request, some interviews involved more than one organisational representative. In such circumstances, they were necessarily aware of their colleagues' participation. In other instances where more than one representative of an organisation participated, all participants' confidentiality was protected.

- FVNW#2, 5+ years
- FVNW#3, 5+ years

d) JUST (refers to individuals working in a justice-related field, eg police, lawyers[34] and judicial officers):
- JUST#1, work experience not stated
- JUST#2, 15+ years
- JUST#3, 2–3 years
- JUST#4, 20+ years
- JUST#5, 10+ years
- JUST#6, various levels of experience
- JUST#7, experience not stated
- JUST#8, 25+ years
- JUST#9, experience not stated
- JUST#10, 10+ years
- JUST#11, 20+ years
- JUST#12, 15 years
- JUST#13, 2–3 years
- JUST#14, 5+ years
- JUST#15, 15+ years
- JUST#16, 25+ years
- JUST#17, 20+ years

e) INTER (refers to a participant representing some type of intersectional agency):
- INTER#1, 1 year in current role but no direct experience with the *FVA*
- INTER#2, 20 years' work experience

The interview questions were open-ended and intended to elicit the stakeholders' general observations about the operation of the *FVA* and suggestions for improvement. The instrument also included brief demographic background questions, in order to situate the participant's comments by the type of organisation (for example, women's services) and ascertain how many years of experience, and the type of experience, they had had with FV legislation and issues in the ACT, which enabled us to describe participants' years of experience with the legislation, as set out above. No other potentially identifying demographic variables were collected.

A thematic analysis of the 520 pages of interview material was carried out using NVivo to identify key themes arising from our interviews and the written comments received.[35] This analysis was guided firstly by an examination of all participants' responses to the questions in the interview guide to identify any themes or patterned responses within the data. The interview guide questions

34 We interviewed lawyers with experience representing both (alleged) perpetrators and affected persons, although the latter was more common.

35 By using this type of qualitative methodology, patterns or themes are recorded and then become the categories for analysis: see Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77, 83.

included, for example, participants' direct experiences with the *FVA*, what they saw as the positive and negative dimensions of the legislation and its implementation, and their observations concerning inter-agency collaboration and communication challenges. Following that initial coding, we then examined whether we were able to identify different perspectives on the operation of the Act across participant cohorts. For example, we identified whether participants working in the FV women's sector took a similar or different view to certain issues, compared to those working in the justice sector. In the presentation of our findings below, we highlight similarities in participants' accounts across sectors, as well as points of difference, where such differences existed. Selected quotations are used to illustrate the meaning of the patterns identified through the analysis and identify points of agreement or disagreement amongst participants and across stakeholder groups.

A *Caveats*

We note the limitations inherent in the restricted scope of this study, both in terms of the sample size, the tight timeframe in which the project was conducted, and the limited areas of the legislation examined.[36] Another caveat concerns the risk that respondents were not self-selecting. Organisational managers may have recruited only those employees most likely to give the answers the organisation would prefer to be heard, which could bias the results.

IV LEGISLATIVE THEMES

A *Definitional Changes*

Some of the interviewees across occupational sectors expressed views implying that the definition of FV had been improved in the *FVA*. For instance, Directorate#2 felt that 'the inclusion in the Act of coercion and control and emotional abuse … have enabled a more robust conversation with people experiencing family violence'. JUST#13 agreed:

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

Others, including the following two women's sector participants, agreed that the broadening of the definition has proven helpful, although FVW#3 suggested this had not translated into practice expeditiously, noting that

36 The Justice and Community Safety Directorate guided the development of the interview questions, which focused on particular areas of policy interest to the government. The findings in this paper are drawn from that study and do not constitute consideration of all relevant issues that relate to the *FVA*.

> [w]hat was really interesting though is when it was rolled out, the changes actually didn't come along with the Act at the time. So, magistrates were still making judgments based on the old legislation, so there was a lot of work that had to be done there.

In addition, although economic abuse is included as part of the definition of FV,[37] and despite support/case management workers receiving training about what constitutes economic abuse, FVW#2 said that she had not yet witnessed 'a single case that we have supported to seek legal assistance due to economic abuse where the legal service accepted to act on behalf of the woman'.

Nevertheless, this lag between enactment and implementation is reported as improving, with a seemingly accompanying change identified by some stakeholders. For example, FVW#6 felt the courts now recognise these forms of FV: 'When people are applying for orders, they're recognising social isolation, economic abuse, financial control, all of those things, in order to obtain an interim family violence order.'

This application of the expanded definition was also noted by JUST#13, who saw positive changes coming from the new model of interim orders and the ability to obtain this type of order for non-physical violence:

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

1 *Suggestions for Further Broadening of the Definition of FV*

When asked if they would like to see further changes made to the definition of FV, a minority of participants did not consider this necessary or desirable. These participants came from the justice and directorate sectors. For some, amendments were not necessary, because they believed that the open style of drafting of the current definition enabled behaviours like coercive control to be captured:

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

Several felt that adding to the definition could lead to inflexibility or narrowing of the scope of what is or is not considered FV (JUST#2). For JUST#8, 'there's a risk also that the more specific you are, the more loopholes there are. So, I think I generally prefer to keep it less specific'.

Other justice stakeholders were concerned that the definition could become unworkable and 'a bloody big piece of legislation, if you tried to capture all of the

37 *FVA* (n 1) s 8(1)(a)(iv).

psychological hotplate stuff' (JUST#15). To similar effect, JUST#16 was concerned that 'the more you put into the definition, potentially the more awkward the definition becomes'. Another participant believed that, while it was important to recognise issues such as elder and dowry abuse, this should be done separately from the *FVA*.[38] They also felt that technology-facilitated abuse and coercive control were sufficiently covered in the Act already (Directorate#2).

However, most of those interviewed, across all sectors, felt that more amendments to the legislative definition of FV were needed. When asked whether there was a need for specific reference to technological abuse,[39] a number of participants observed that it was becoming 'an increasing issue in people's lives' (Directorate#3). Justice stakeholders also saw the need for reform, advocating for the inclusion of this type of FV in the definition, with legislative reference to specific examples, including 'non-consensual sharing of intimate images, tracking or electronic surveillance, intimidation or harassment through social media or use of other technology' (JUST#7) and 'using all forms of social media to humiliate and demean and denigrate people and to isolate their friends from them' (JUST#13). JUST#6 suggested that, to ensure that there is no ambiguity for the respondent in what constitutes abuse, 'reference to technological abuse [should] also specifically [be] included in the list of standard FVO orders', while JUST#7 stated that the 'no contact' provision should include specific reference to prohibiting contact via social media and other technological means. JUST#1 commented on the increase in 'technology-facilitated offending, including stalking', noting that 'current legislated offence provisions are limited in their ability to address these developing technologies and do not sufficiently encompass all offending behaviours'. Accordingly, they called for the drafting

> of a new offence, or the broadening of the *Crimes Act 1900* (ACT), to allow the stalking offence to better respond to technological developments and modern offending methodologies.

This issue has now been addressed, with the passage of the *Family Violence Legislation Amendment Act 2022* (ACT). This broadened the definition of FV in the Act to include 'harmful use of, or interference with, technology'. A number of examples (eg 'using software to track a family member's whereabouts or computer use') are also provided.[40]

38 Since we completed our interviews, the ACT government has introduced a specific offence of elder abuse, the first Australian jurisdiction to adopt such laws: see Tom Lowrey, 'ACT to Criminalise Elder Abuse, though Some Lawyers Fear It Will Make Prosecutions More Difficult', *ABC News* (online, 7 May 2020) <https://www.abc.net.au/news/2020-05-07/elder-abuse-will-soon-be-a-crime-of-its-own-in-the-act/12220872>. For discussion of dowry abuse, see, eg, Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *The Practice of Dowry and the Incidence of Dowry Abuse in Australia* (Report, February 2019).

39 See generally Heather Douglas, Bridget A Harris and Molly Dragiewicz, 'Technology-Facilitated Domestic and Family Violence: Women's Experiences' (2019) 59(3) *British Journal of Criminology* 551.

40 See *FVA* (n 1) s 8(2)(f), as amended by *Family Violence Legislation Amendment Act 2022* (ACT) s 93. These amendments came into effect in August 2022.

Some participants also spoke of the need to include and more clearly define the concept of 'coercive control',[41] which is 'really significant' (Directorate#3) and 'is part of domestic violence' (FVW#5). As FVW#3 noted, 'it cannot be ignored. I would love to see coercive control explained … Because coercive control is too much open for interpretation'. Similarly, FVW#2 felt that 'coercive ongoing control, as a pattern of behaviour, should receive a higher significance and [be] address[ed] in the Act'. INTER#2 noted that issues of coercive control and technological abuse were disproportionately experienced by women with disabilities and therefore considered their omission from the *FVA* 'an oversight'.

We also asked about whether specific types of cultural abuse should be added to the definition. Those who responded were employed in the FV sector and felt that this did need to be included in the definition. FVNW#2 identified the isolation of Aboriginal women by non-Indigenous Australian men from their culture and community 'as a really sort of deliberate act around trying to isolate and undermine their partner', as well as referring to migrant men disconnecting their partners from their 'family back home and stopping [them] from engaging in cultural practices or linking in with local community'.

One participant was surprised that dowry abuse was not already included in the ACT's legislation, as it is in Victoria:[42] '[d]owry abuse is a separate charge … I'm amazed it's not included already' (FVNW#3). FVW#2 had observed a variety of cultural abuses, including

> pressures by women's families over them not to leave their violent partner … in order to save shame, or to continue to receive financial help, or to comply with dowry terms between the man and woman's families overseas.

Beyond the responses to questions about these three additions to the definition, several stakeholders had other suggestions, such as INTER#1: 'labelling family violence of a homophobic or transphobic nature would be really, really useful'. JUST#4 suggested including elder abuse, while others called for recognition of the impact of FV on children (JUST#3) and more extensive inclusion of sexual violence (FVW#1).

B *Other Legislative Changes Discussed by Participants*

In addition to broadening the definition of FV in the *FVA*, stakeholders discussed their views of other potential amendments. For the most part, these glimpses into other statutory changes were provided as a part of participants' responses to broader questions concerning the efficacy of the Act in changing culture and/or in better protecting those affected by FV.

41 For a recent argument against criminalising coercive control, see Sandra Walklate and Kate Fitz-Gibbon, 'The Criminalisation of Coercive Control: The Power of Law?' (2019) 8(4) *International Journal for Crime, Justice and Social Democracy* 94.

42 See *Family Violence Protection Act 2008* (Vic) s 5, where dowry abuse is listed as an example of FV.

First, we look at what was reported as positive. Several mentioned that, under the *2008 Act*, both parties needed to consent for an interim order to be continued,[43] which was perceived as leading to a backlog. This is no longer required under the *FVA*, described by JUST#3 as 'a good change, because it means we can focus on the order, rather than these procedural aspects and court time'. Another time-saver for applicants was pointed out by FVW#2, who commented that the 'fact that FVOs from anywhere else in Australia are recognised without the need for further applications is a very positive and long-needed change'.

FVW#6 noted that the threshold to receive an interim order had been lowered, with the applicant not having to prove 'a risk of physical violence … just have to prove there's a risk of family violence'. FVW#3 reflected on the special interim family violence orders and court-initiated orders[44] as some of the 'real key things from the new Act … Some real positives around those, but again, both of those, when they [were] rolled out, [had] real gaps in processes'.

Two justice stakeholders pointed out other positive changes. JUST#10 referred to the development of a form that was 'easy to navigate' for FVO applicants, as well as those exercising judicial decision-making powers to 'get all of the information hopefully that they needed to be able to make an interim or final decision'. In addition, JUST#8 noted that

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

However, there were also more critical responses about the legislation, with JUST#16 expressing concern about the duration of interim orders, as well as the problems inherent in the ex parte nature of the application process:

> So, you've got an ex parte [interim] order, which can give a complainant immediate protection, but the general approach to law, the ex parte orders, is that, by nature, they're unfair…The current regime is, if you obtain an ex parte order, that's often attained on very limited evidence. That remains in place for four to six weeks until you go to a conference. If it's not consented to, it remains in place for a number of months for hearing … So, what it means is you've got ex parte orders that are in place for a long period of time, and you've also got, at the other end of the equation, the complainant is locked into conflict with the alleged perpetrator for an extended period of time.

FVW#6 disagreed and wanted to see the expansion of ex parte in matters where the interim order needs to be extended to allow for the applicant to continue to be protected under the order:

43 See *2008 Act* (n 29) s 36; *National Legal Response* (n 14) 688 [15.74].

44 See *FVA* (n 1) ss 22, 26, 30–2, 87–8, 111–14; above Part II.

> Why can't it be, you arrive, if you want your interim order extended, you do the similar process? You apply, you say, 'I want an extension. Can you grant me the extension on an interim basis right now? These are the reasons why I want an extension' and then it runs that same way. Because then, as soon as it's served, you've got that protection as well if your order runs out. Because then you've also got to have that documentation served on the other party. They've got to show up. What if the other party is interstate now and it takes a couple of weeks, or whatever?

Other issues identified with interim orders included amendments not being able to be made in the absence of one of the parties:

> So, you get the interim order ex parte, but if something changes and you can't get an urgent amendment to your interim order ex parte, you have to apply for the amendment, it's set for conference and it gets set for hearing and actually the majority of amendments don't get decided, if they don't resolve at conference, what they often do is just say 'we'll decide that at final hearing'. (JUST#13)

Additionally, FVW#6 expressed doubts about the efficacy of the court-initiated special interim orders:

> Because they [affected persons] are not technically the applicant, they have no control over that process. … And it's only really extended each time the matter's in court, because it's court-initiated and it travels alongside the criminal proceedings.

As set out earlier, these orders were designed to give the court the option of ordering an FVO in circumstances where there is evidence of relevant offending, even where an affected person may not have applied for an FVO. These orders remain in place until the related criminal matter is finalised.

FVW#6 discussed how the special interim order process could disempower affected persons, through a lack of communication or information:

> I've had a matter where I've been in court with a client … and we lodge the paperwork, and then the courts call up and say, '[w]e can't listen to this matter because there's already a court-initiated [one]'. The client didn't know that there was a court-initiated, and they've spent the whole day at court applying for an order that's actually already in place and is an order that doesn't have the conditions that they're comfortable with or that they want.

Court-initiated orders were also seen as problematic by FVW#3, who confirmed that 'we were finding that victims of crime had no idea that a court-initiated order had been granted'. This participant was hoping for a change in information flow and that affected persons would be notified by the Legal Aid Domestic Violence and Personal Protection Order Unit.[45]

There were also some concerns expressed about final orders. Directorate#4 suggested that these should be given for

45 See 'Domestic and Family Violence', *Legal Aid ACT* (Web Page, October 2020) <https://www.legalaidact.org.au/what-we-do/dv-unit>.

> much longer periods … like up to five years. … it's quite a process for someone to go and get a family violence order and, for some people, they'd have much greater peace of mind if it didn't run out in two years.

By contrast, JUST#17 was concerned by the legislative drafting in the provisions around extending orders: '[t]he test for the extension of the order is odd. It's hard to know who has the onus of proof and what they need to prove. It's written twice with double negatives'.[46]

JUST#14 had another concern and pointed out that confusion persists about whether people with disabilities living in a shared environment are covered by the *FVA* and

> protected from family violence from their carers. … We specifically wrote them into the Bill and included an example of what a family-like relationship would cover as a person with a disability and their carer.[47] But, for whatever reason, that kind of hasn't stuck or that message never got through.

INTER#2 agreed:

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

JUST#7 suggested revisions to the *FVA*, to ensure that people with disability are protected:

> The Act [needs to] be revised to ensure there is mandatory referral to the Public Advocate[48] of all matters where an applicant or respondent [to the FVO] has impaired decision-making ability and is not represented, or where it is not clear whether they are represented … [and] where children or young people under 18 years old are either the applicant or respondent and who are not represented, or where it is not clear whether they are represented.

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

46 The relevant section provides: 'The Magistrates Court must, on application, amend a final order (the *original order*) by extending it for a stated period *unless satisfied that a protection order is no longer necessary* to protect the protected person from family violence by the respondent': *FVA* (n 1) s 86(1) (emphasis added).

47 See the example listed under ibid s 11(2)(g).

48 The ACT Public Advocate is an independent statutory position in the ACT Human Rights Commission and is responsible for advocating for the rights and interests of people experiencing vulnerability: see 'Public Advocate', *ACT Human Rights Commission* (Web Page) <https://hrc.act.gov.au/public-advocate>.

V IMPLEMENTATION ISSUES

The interview instrument included questions concerning the police and the courts with their associated players. Amongst other questions, we asked stakeholders if they had observed cultural change and/or changes in practice in the criminal justice system. Some participants (n=16) felt there had been positive cultural changes in recent years, although they were mixed in their views about whether these were due to the new legislative scheme or other shifts. These participants came from a variety of sectors, but, importantly, were often those working directly with the system and were in a position to observe responses to FV under the new legislation.

However, several stakeholders also expressed the view that further change was still required. FVNW#2 stated that

> there's probably still some work to do in terms of identifying the predominant aggressor and … rather than looking at family violence from an incident-based sort of violence back to looking at it as a patterned form of violence.

FVW#4 remarked that despite some 'good news stories … we still have moments where you're like, "[o]h well, just as you think we're going forward"'. In the context of their comments, this suggests that they still thought there was scope for improvement in how FV is perceived and responded to in the ACT.

Another repeated theme was that the effective application of the Act often depends upon the individuals within the system. For example, FVW#2 noted: 'It's personality-based. When that personality goes … I'm talking even within the courts … I think it falls down'. Several participants offered ideas for improvement. These are included in the following sections about police, the courts, and the latter's allied personnel.

A *Policing*

How police are implementing the legislation evoked some differences in opinion, even within a particular sector. For instance, JUST#15 observed that 'police are getting smarter at using things like the [evidence-in-chief] stuff obviously, but also photos'. However, JUST#13 noted that the police, when supporting women to apply for orders, needed to work more collaboratively with them.

One FV worker was positive about the introduction of ACT police liaison officers 'being able to apply on behalf of clients' (FVW#3).[49] In contrast, other

49 Several other Australian jurisdictions have a similar role, variously known as DV liaison officers, for example, in New South Wales, or FV liaison officers ('FVLOs'), for example, in Victoria. For discussion of FVLOs in Victoria, see generally Amanda George and Bridget Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria* (Report, November 2014) 66–7; *Royal Commission into Family Violence*: *Summary and Recommendations* (Report, March 2016) vol 3, 37 ('*Royal Commission into Family Violence*'); Marie Segrave, Dean Wilson and Kate Fitz-Gibbon, 'Policing Intimate Partner Violence in Victoria (Australia): Examining Police Attitudes and the Potential of Specialisation' (2018) 51(1) *Australian and New Zealand Journal of Criminology* 99.

stakeholders from the women's sector were more negative in their observations of policing. FVW#2 had seen an initial enthusiasm that had ebbed, with 'the level of confidence of women in FVOs as a protection mechanism … returning to previous levels of very low confidence'. Two expressed their observations that the onus continues to be placed upon women to produce acceptable evidence and that this would be even more problematic as a result of the definitional changes adding cyber-stalking and cyber-abuse (FVW#2; FVW#5). In other words, as the scope of the Act expands to cover a broader range of behaviours, affected persons may be expected to produce evidence to support their claims of new types of abuse.

Directorate#4 was also ambivalent about progress, expressing the view that, while there had been some good engagement between police at a senior level, in terms of prioritising FV issues, any cultural shift had otherwise been 'patchy'. There were positive reports from people who had engaged with the FV Unit in ACT Policing (created just before the *FVA*), but there were also 'a lot of stories about really inconsistent practice from police in terms of their response to victims of domestic and family violence, in terms of frontline police'. The role of the FV Unit was also questioned by JUST#6, who said that, for the first two years, instead of employing lawyers or police prosecutor positions

> they employed two [FVO] liaison officers … two men, who did not have legal training, whose role was very murky … sort of calling people up the next morning after police involvement, having a chat with them, and often sending them over to Legal Aid or [Domestic Violence Crisis Service] ('DVCS')[50] or perhaps going with them to the Legal Aid or DVCS appointment.

FVNW#2 had reservations about police action in relation to breaches and believed that, while the Act potentially provided greater protections through the broader definition of FV, there was a lack of mechanisms for enabling accountability for perpetrators who have breached orders a number of times. JUST#3 also had concerns about the 'police force, that there's a lack of resources to follow up family violence breaches … and they're not prioritised'.

Other participants were even more critical of the system. JUST#5 found it 'curious in the ACT that [police] don't, as [a] matter of course, take out a[n] [Apprehended Violence Order] whenever there's any type of family violence incident' and noted that the practice appeared to be different in New South Wales. Directorate#4 raised the lack of understanding that remains about the behaviours covered by FV and recognised that FVOs are limited in their ability to offer protection, noting that applicants do not always receive sound advice and assistance:

> [P]articularly with police, probably, the intention of the *Family Violence Act* to provide protection for a broader range of behaviours isn't necessarily as well understood as we want it to be. So that kind of is a barrier to people being protected … And you've got to have good advice about what's actually going to protect you.

50 DVCS refers to the Domestic Violence Crisis Service, which is the main FV support service in the ACT: see 'Home Page', *Domestic Violence Crisis Service* (Web Page, 2022) <https://dvcs.org.au>.

FVW#6 noted that broadening the definition of FV did little to protect affected persons 'if frontline officers are still not using that and running with it, there's not a huge level of added safety, if someone's getting psychological abuse every day or there's coercion and control'.

In addition to these direct comments concerning FV policing, other feedback emerged in the context of responses to a question about the AHFVOs (these are described above in Part II). We note the concern expressed about the operation of AHFVOs, with professional participants almost entirely in consensus that these orders were not protecting those affected by FV effectively. Specifically, concerns were raised about their limited use, the higher burden of proof, inflexibility about when they can be issued, and lack of information about expiry dates.

JUST#1 felt that police might be reluctant to act as applicants in such orders, due to a higher threshold of proof in the *FVA*, compared to the *2008 Act*, namely, the requirement that it be 'immediately necessary to (i) ensure the safety of [a person] … or (ii) prevent substantial damage to [the person's] property',[51] compared with 'may cause physical injury … or substantial damage to the property'.[52] JUST#1 outlined additional practical limitations, including that AHFVOs may only be issued outside of court sitting hours and FVO applications must be made by 11:00am, to be heard on the same day

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

Perhaps due to this context, some participants, such as the following three, across various sectors, had observed that the power to issue AHFVOs was not often utilised by police:

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

> [M]y anecdotal evidence from the people I know in the sector is that it doesn't get utilised. … [T]hat's because I don't think we've had that attitudinal shift that says to the police, this is about you and the perpetrator. It's not about you and the victim or him and the victim. (Directorate#2)

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

51 *FVA* (n 1) s 100(b). See generally at pt 7.

52 *2008 Act* (n 29) s 69(a)(i).

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

Other participants believed that the AHFVOs were being used, but expressed some qualms about police motivation. For example, a FV worker had seen police exercise these powers quite often, but 'it does seem to be hit and miss' (FVW#1). Several stakeholders were concerned that, despite the pro-arrest policy described in the introduction, these orders were being used instead of making a criminal arrest (FVW#6) and by police 'in circumstances where they are uncertain about (or potentially uninterested in) prosecution' (JUST#12). JUST#17 agreed:

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

Other issues raised about AHFVOs included that they offered no greater protection to women and/or children affected by FV than the standard process of applying for an interim order and that safety could be an issue if there is confusion regarding when this order would expire:[53]

> We've had quite a few examples where, just at a basic level, it hasn't worked. So, the [orders] are granted … for two days, but … applied for on a bank holiday and no one could actually work out when the order ran out, not even the courts. (FVW#3)

> This is something that I raised towards the end of last year at an inter-agency meeting, which was, given that police, across Christmas, New Year, are the ones that apply when the courts are closed, I said, '[w]ell, how does that work? Because, if it's two business days, how does that work with all your holidays?' And no one could answer that for me … but I feel like a real way to deal with that would be to put an expiry date on it, … rather than saying just two business days … from when the court is open, because across that period [Christmas] is when stuff occurs and people need to know when their order expires. (FVW#6)

Other constructive feedback about the police emerged indirectly in response to a question about whether Police Issued Safety Notices ('PISNs')[54] should be introduced in the ACT. Most professional stakeholders were opposed to giving the police this added power, with JUST#7 asserting that the introduction of PISNs ought to be delayed until there was clarity about the role of police in applying for orders. Similarly, JUST#6 stated: 'I think we need to iron out what the current role for police is in the space of family violence orders before we jump towards a consideration of police issued safety notices.' Some, like JUST#6, expressed the

53 As set out in s 106(1) of the *FVA*, an AHFVO remains in force until the *earliest* of the '(a) close of business on the second business day after the day the order is made; (b) the order is revoked; [or] (c) a final order or interim order made against the respondent in relation to the affected person is served on the respondent'.

54 For discussion of this model, see *National Legal Response* (n 14) 367–79 [9.2]–[9.48].

view that such notices would be rarely used: '[w]ell, if we're not seeing [the] use of other powers, adding another one, is it going to really change things for people? It might change things for a few people, but probably won't drive a big change' (Directorate#4).

Others were concerned that police lacked proper training about the nuances of FV. Because of this, Directorate#2 suggested that police could be 'gaslighted' (that is, manipulated) by FV perpetrators:

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

A few justice stakeholders identified a redundancy with the after-hours regime. For example, JUST#13 thought that the proposed PISN model 'sound[s] very much like after-hours orders, to be honest', while several raised questions about police using a PISN instead of making a criminal arrest. For example, JUST#11

> could not conceive of a particular circumstance where you can't reach an after-hours magistrate on the telephone to get an order [or] the person hasn't done something where the officer has a reasonable suspicion that you've committed an offence that you can be arrested for.

JUST#13 also felt that 'there is already, amongst police generally, a great willingness to say you know "go and get an order", instead of applying criminal charges, and [I'm concerned] that this [the PISN] would become a substitute'.

A FV worker (FVW#4) noted that police often did not treat FV as serious and so questioned how useful PISNs would be. Further, they noted there was a lack of information regarding how cases were flagged (ie identified as FV matters) in police systems. FVW#4 suggested that FV matters were only 'taken seriously' by the police in about 50% of matters and added: 'right now, we don't really know, our staff don't know, if that's been flagged in the system, how it's flagged in the system? We just don't know'.

Police also received negative assessment in the context of serving orders on respondents. Several people working in the FV sector had witnessed such service being delayed and therefore leaving survivors feeling unsafe:

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

1 *Suggestions for Improvement*

There were several suggestions aimed at improving how the police respond to FV, including added powers 'to enter premises where they reasonably believe an FV incident has occurred, however is no longer ongoing' (JUST#1). JUST#1 also advocated for several amendments to the *Crimes (Forensic Procedures) Act 2000* (ACT), to reduce the number of times police are required to interview an affected person. FVW#6 advocated for the legal training of specialist officers, who 'deal with it day in, day out, to say, "[t]his is what this [FV] is. This is how it can be enacted. This is what you can charge for"'.

In addition, several participants advocated strongly for police to be given more power to issue orders, with FVW#6 expressing the view that the problem with the ACT legislation is that it is currently 'applicant-based' (given their perception that the police are not acting as applicants as frequently as the legislation allows):

> It's the person that's experienced the violence. … [T]here's the idea that the person that has experienced the violence is also supposed to appear there and say, 'I want an order', because if not, their voice, again, isn't heard … But if it's a police officer who is the applicant, and I'm a protected person, there's less level of risk for me.

Directorate#2 stated:

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

JUST#1 further argued that such notices would

> provide an effective, balanced method of ensuring protections afforded to those affected by FV are maximised and meaningful [and] minimise the trauma experienced by victims and remove barriers to accessing interim and full FVOs.

However, JUST#1 acknowledged that

> where consent of the applicant is obtained, it would be preferable for all Family Violence Safety Notices[55] to proceed to court for conversion into an interim FVO. This approach would provide benefits to FV victims, however, would also likely have resource implications for police, courts and other agencies.

B *The Courts*

One justice sector professional (JUST#10) had observed that 'registrars … and magistrates hearing applications now apply a different contextual lens to how matters are applied for' and that, similarly, 'those services providing assistance to applicants, say Legal Aid, are very aware of the broader definition'. JUST#8 agreed:

55 This is the term used for the equivalent of a PISN in Victoria.

> [T]here's a much better understanding about the broad nature of family violence and that it can include things like suicide threats designed to intimidate … So, you get respondents saying to magistrates, '[t]here's been no family violence' and then the magistrate [say]s, '[w]e need to have a look at the Act and see what family violence means'.

JUST#12 suggested that 'there has been increased awareness of the types of behaviours that can manifest as family violence and an awareness that the courts will recognise these behaviours as warranting protection and prohibition'. FVW#6 was similarly positive:

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

JUST#3 reflected positively that 'the other thing is that it's quite quick between interim order, conference, and hearing, really'. Improved processes were also noted in relation to the increased flexibility 'around creating and simplifying the family violence orders' (Directorate#1).

1 *Orders Still Limited in Effectiveness*

However, there were some fairly ambivalent views, such as JUST#17:

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

For the most part, those employed in both FV women's services and justice had more negative experiences to share. For example, JUST#11 felt that, despite s 16A(2) of the *2008 Act*, which allows for a child to apply for a protection order in the same application as the parent, 'there's more reluctance to put children on orders than there once was'.[56] FVW#5 was likewise concerned that children remained unprotected under the legislation, as they are 'not generally part of any order, which makes it really difficult for women navigating with perpetrators who are the father of those children'. FVW#5 had observed some affected persons being pressured to accept an undertaking,[57] rather than an order; in their view, this did not offer children protection:

56 Both the *2008 Act* (n 29) s 7(1)(a) and *FVA* (n 1) s 36 refer to the safety of the child as being of 'paramount consideration'.

57 See generally *FVA* (n 1) s 64. See also above n 22 and accompanying text. The word 'undertaking' does not appear in the *2008 Act* (n 29).

> [W]omen with complex issues, like immigration matters, because of the complexities around that, they're being encouraged to do an undertaking with the perpetrator, rather than take an order out. I think that's coming from police, but … from solicitors as well. I don't know where that fits in the legislation but it's certainly worth mentioning.

Another theme concerned the lack of translation of the FV definitional changes in the Act into practice. For instance, FVW#1 had observed an increased focus on FV as singular 'events', as opposed to 'a pattern of behaviour'. JUST#13 likewise stated:

> [A] concern that we have, knowing the magistrate that we might get, [is] that there would be a dismissal of the patterns of behaviour, despite the legislation being very specific about patterns of behaviour of family violence needing to be considered … there's still often I think, a bit of internal eye-rolling that we sense from the bench.

2 *Issues with the Interpretation of the Legislation*

Other people working within the justice sector had also experienced little evidence that definitional changes were being implemented. JUST#13 felt that change within the court system had occurred 'quite begrudgingly':

> I think that it took us quite a while to get some registrars to accept what we thought was the plain language of the legislation about an interim order no longer being only needed for physical violence. You might need an interim order in an urgent situation because someone's been actively threatening self-harm, or they have been, you know, calling you 200 times in 10 minutes.

JUST#13 explained that, in terms of a final hearing,

> we do still butt up against the attitude that we do see in some magistrates, which has been plainly said on the bench, that 'oh, there's no physical violence, why aren't undertakings appropriate?'

Another interviewee observed that, although there did seem to be an increase in FV cases since the Act was introduced, this did not reflect the areas involving the expanded definition of FV: '[w]e're just dealing with standard types of breaches that were the same under the old Act. So, those types of different issues, I haven't really seen much of that' (JUST#5). JUST#16 felt that, particularly with ex parte orders, 'there's the question of to what extent the extended definitions of family violence have taken root in terms of decision-making … we might deal with direct violence, more than coercion and control'.

3 *Other Misgivings about the Court Response*

Beyond the lack of translation, another criticism concerned a lack of change in attitude to FV, with some stakeholders aware 'that we have to be really, really careful not to be conned by people making stuff up' (JUST#11). A stakeholder from another sector (Directorate#4) reported that data from people coming for FV matters at the court had found that

> last year, it said something like 40% of the people coming for a family violence order were not assisted by any agency on the day. … So if they're not getting good advice at the front-end of that process, then they're maybe not getting the best protection that they could.

Directorate#4 had other misgivings about the court response; the first concerned cultural-specific processes, such as the courts' seeming resistance to using interpreters:

> [T]here's an assumption that there seems to be, the stories that I hear, is if someone speaks in English at all, the assumption is they don't need an interpreter, but in fact they probably do … they're able to communicate something with you, [but] that doesn't mean they're understanding everything else that's going on.

Secondly, Directorate#4 was concerned about the lack of trust in the system that can ensue, as a result of the court process, with affected persons becoming 'disaffected' and possibly 'hostile witnesses in the court', which could lead to a disinclination to 'call the police again'.

In addition, overwork and under-training of key players were discussed by some. For instance, FVW#3 noted the existence of 'fatigue' in the system, with registrars seeing 'maybe 15 interims a day, for example'. This participant went on to explain that cultural change would also be limited by staff transiency and 'no ongoing education for these people. We've got new registrars at the moment who are not educated in family violence'.

Two other participants from the justice sector also were concerned about the lack of training:

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

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

Other justice stakeholders raised concerns about the consequences of inadequate resourcing for the frontline services

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

> The Act aims to make people safer, by allowing them to apply for an order. In fact, in some circumstances, applying for an order will escalate the safety risk. If we don't

> have appropriately resourced, accessible expert services on the frontline to assist people to reflect on and make the best decisions for their safety, then the Act may not increase their safety. (JUST#6)

JUST#8 was also concerned about the workload implications for legal practitioners. Similar concerns were raised about the court:

> There's a structural resource challenge … in the [court] registry and that is, everyone's working very, very hard. They're always surprised how many matters are coming through the door. There's been an increase in matters of family violence … enough that it's been gradual to apply pressure on the current resources … there's people turning up and working 10 hours a day flat-stick. (JUST#17)

4 *Suggestions for Improvements Related to Courts and Associated Staff*

Some suggestions concerned how registrars draft the wording of orders:

> [T]he application … it says not to commit family violence and then you have the opportunity to write specifically and list them, but registrars say, 'No, I don't need to write the specific list, because we know what the family violence thing is'. I actually think that that should be 'family violence, which is:' and list it. Re-list the definition in the form, because … I feel like [it's] out of sight, out of mind for police officers. So, if it says not to commit family violence, their picture in their head about what family violence is can be totally different, but if it says not to commit family violence, which includes, blah, blah … It's in that, and they go, 'Look, see? Their social control. They're using technology, they've threatened to harm my pet … they've hit the cat', whatever, it's there. It's in their face. (FVW#6)

Other comments about court processes related to making them simpler and more flexible. For instance, JUST#17 suggested introducing, as a default in orders, an exemption to a non-contact condition that a respondent, on one occasion, would be able to go with the police to collect their personal belongings. It was suggested that this would result in

> a lot less paperwork. It would have to be expressed in a way that's clear and it would be nice if it's not hidden away in an offence provision. It could just be a deemed provision in relation to contact or approach, and not approach a residence as well.

JUST#3 felt it would be easier 'to do things by consent', instead of having 'the matter released back to the court, go to court that day … it's a bit of a saga'. They suggested that the process of extending an interim order could be made easier by skipping 'the process of the conferences … and the interim order could be extended, but only to the date of that hearing'. As discussed above, however, the conferences are an important way of resolving the issues in dispute and nearly all matters are finalised at this stage.

Several participants had suggestions for how the extension of final orders could better ensure the safety of affected persons. JUST#1, for example, suggested that an FVO should automatically be extended where the respondent is imprisoned:

> Where an FVO is issued prior to or during a sentence of imprisonment, it is likely that the FVO will expire by the time of release. In this circumstance, absent the extension of an FVO, a victim may be left with no legal protections and limited grounds upon which to obtain an FVO afresh ... significant protection can be afforded through automatic extension of a[n] FVO upon commencement of a sentence and/or maintenance of a[n] FVO for a defined period post-release.

Perhaps unsurprisingly, several participants called for additional resources, especially for the legal sector:

> More support services actually at court. (JUST#12)

> Continuing a strong funding for the Family Violence Unit of Legal Aid, they do amazing work. … The other thing is funding final hearings. There's a load of support to apply for the order, [but] there's limited funding. (JUST#3)

> I think just more judicial resources is critical. … I think there are plenty of deputy registrars running around but there aren't enough magistrates to actually allocate the time that's needed to hear them properly. And it's actually what makes people accountable really, is the hearing of the matter and findings being made. (JUST#8)

VI INFORMATION-SHARING AND INTER-AGENCY COOPERATION

A primary theme that emerged in our analysis was the need for greater cooperation between agencies. However, before considering this issue, we first discuss the comments of several participants who were quite positive about how agencies were working together. For example, Directorate#4 stated that 'the case tracking mechanism' that sits under the Family Violence Intervention Program[58] shows there 'is quite a bit of goodwill to cooperate and collaborate', with agencies involved in the implementation of the Act investing 'quite a lot of time, particularly in case tracking'.

Justice sector interviewees such as JUST#10 identified 'really good networks' with the police, DVCS and Legal Aid, adding that 'we're all learning, finding the issues that arise with the implementation of the legislation together and working on them collaboratively'. Another justice sector worker (JUST#6) noted the changes they had observed over recent years, remarking upon the

> very strong collaboration between the two key support services based at the court, so Legal Aid and DVCS … two very professional teams down there, working well together, and working out when legal advice is required, but providing an option also if someone doesn't want legal advice or representation, to seek expert input.

58 This program started in the ACT in 1998 and involves a coordinating committee and weekly case tracking meeting program: see Australian Capital Territory Government, 'Family Violence Intervention Program (FVIP)', *Victim Support* (Web Page, 3 April 2018) <https://www.victimsupport.act.gov.au/victims-of-crime-commissioner/fvip>. See also Tracy Cussen and Mathew Lyneham, 'ACT Family Violence Intervention Program Review' (Technical and Background Paper No 52, Australian Institute of Criminology, 2012).

From the women's sector, FVW#3 was optimistic, noting that, as the 'ACT is quite small … we have the capacity to be able to share information, probably a lot more easily than [other jurisdictions]'. She reported that their agency worked closely and cooperatively with Legal Aid and the police, with 'a lot more cooperation around discussing those persons that are high risk of reoccurrence of family violence or imminent risk of safety … and that communication has improved'.

A *Gaps in Communication*

Notwithstanding these stakeholders' positive comments, there were others with more ambivalent viewpoints. Although they recounted positive observations or experiences of increased cooperation and communication amongst FV stakeholders since the implementation of the Act, they also identified 'room to improve' (JUST#12), the need for 'an ongoing conversation' (FVNW#2) and that the current system 'still doesn't go far enough to make it as easy and also for … the experience of the clients to feel safe during this' (FVW#4). A number of participants from the FV sector had varied views, with FVW#1 expressing the opinion that the 'information should be shared and we should stop being so caught up in the words, the information-sharing and managing risks, and actually act from a place of protecting people'. Some had experienced or observed a positive connection with a specific service, but usually added a qualifier. For example, JUST#3 stated that the Legal Aid Protection Unit

> is excellent and we're very impressed with their work and always feel that they prioritise clients and work very hard and do a really great job. … [But] we feel very strongly that all cooperation and communication for clients should be with client consent.

A number of participants expressed concern about gaps in collaboration. JUST#13 was satisfied with cross-referrals between their agency and DVCS, but had seen 'no referrals from the police, [even though] we've done education sessions [with them]'. FVW#6 also noted that there were some officers 'from frontline patrol that don't understand it, or people at the court that don't quite understand it or have old school views on things'. JUST#11 was particularly 'frustrated' about not being able to get access to the right people within ACT Policing, leading them to form an inter-agency committee to establish a centralised database to facilitate better information flow.

FVW#1 considered the courts to be occasionally problematic and suggested that, although there were aspects of cooperation in the ACT that were better than any other jurisdiction in which they had worked, 'things went awry … when we reach[ed] the court system'. Directorate#4 agreed that 'there's definitely not as much collaboration as there could be across the justice agencies. Any kind of collaboration with the courts around anything is quite hard'.

Other participants, across all sectors, were even more pessimistic, noting they had seen few changes in the extent to which different stakeholders cooperated and/or

communicated with one another on FV issues. As an example, Directorate#3 observed that

> we all have these siloed information systems. So [each Directorate] has their own records system, and [Child Youth Protection Services] ('CYPS')[59] has their own record system and … there's no common sharing of that [information].

In a similar negative vein, JUST#12 felt this was 'not what it could [or] should be', while JUST#8 had not 'really seen any real change in the way stakeholders deal with each other'. According to JUST#6, 'there is still some lack of clarity in relation to when and how stakeholders meet to talk about domestic and family violence in the territory'. JUST#13 had observed 'too little interaction with [CYPS], although [it's] much easier to get an order with the children on there, when the CYPS says they're concerned'.

FVW#2 observed 'that cooperation and communication between stakeholders … in the ACT is non-existent and, at the very best, separatist and competitive, rather than cooperative' and felt there had been 'no changes as a result of the new legislation'. They described 'the lack of communication' as 'dangerous' when criminal justice outcomes for partners in refuges are unknown, with nobody contacting women when the perpetrator is released from gaol or advising them of the outcome of court cases:

> I have witnessed and participated many, many times in completely failed attempts by women to learn of any changes or any information related to what constitutes clear risks to them, including by contacting police, Legal Aid (DV Unit inclusive), the [prison], the Court, [and] DVCS. There is a complete systemic failure in considering and including victims in their thoughts and practices in relation to communication.

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

> Because no money has gone into service provider awareness rating and so … I would say that it had very little influence or effect at all in women with disabilities, in any accommodation situation, actually finding a pathway to safety … I think that there needs to be an information-sharing hub and better de-siloing between the violence sector and the disabilities sector. … [O]ne of the ways in which we could see better implementation of the Act would be to focus on the local area coordinator within the [National Disability Insurance Scheme].[60]

59 CYPS refers to Child and Youth Protection Services, which is the statutory child protection agency in the ACT: see Australian Capital Territory Government, 'Child and Youth Protection Services', *Community Services* (Web Page, 11 March 2021) <https://www.communityservices.act.gov.au/ocyfs/children/child-and-youth-protection-services>.

60 This federal scheme for people with a disability operates in each state and territory. For information on the ACT, see 'Australian Capital Territory', *NDIS* (Web Page, July 2022) <https://www.ndis.gov.au/understanding/ndis-each-state/australian-capital-territory>.

B *Information-Sharing Where There Are No Criminal Charges*

Stakeholders were explicitly asked for their views on sharing information in circumstances where no criminal charges have been laid. They generally agreed that there is currently a deficit in relation to information-sharing between agencies and that an increase in pooling information would be beneficial in the FV sphere. Some participants specifically mentioned that the health system is often the first contact point for people experiencing FV, so 'more needs to be done from that point of the system' (Directorate#3).

One participant (Directorate#4) felt the ACT lagged far behind other jurisdictions

> where they have some kind of either co-located function that, for example, at a minimum brings together … they're different in different states, but police, child protection, DV, crisis agency [working together] to effectively assess and triage cases as they're identified.

Several participants referred to the frameworks in other Australian jurisdictions, such as the Gold Coast Integrated Family Violence Response[61] and the Victorian approach,[62] as examples of what could be done in the ACT. FVNW#1 commended the Victorian model, where 'you are able to disclose without consent to another registered information or information-sharing entity'.

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

> [T]he reality is there are lots of family violence related behaviours that are not going to result in a criminal conviction and the number of men that we work with in the program where they are coming in voluntarily and they've not got any significant history of criminal behaviour and they don't have any of the other criminogenic factors either and so they are considered quite stable. … [H]ow do we actually track these men through the system? (FVNW#2)

> I'm not seeing a good degree of information-sharing between the organisations where women with disabilities are likely to turn up and where there is disclosure … there could be a great deal of improvement. (INTER#2)

Several participants, however, saw safety, applicants' consent, and privacy as (potentially conflicting) considerations. According to JUST#15,

> privacy rules are there to stop people losing control of things and things being breached. They were never intended to be inserted as a way to stop two agencies from working collaboratively to achieve something positive. So, maybe there should be an imperative to get around privacy laws, particularly where it's for a therapeutic benefit.

61 See, eg, Donna Justo, 'The Gold Coast Domestic Violence Integrated Response to Perpetrators of Domestic Violence: Political Activism in Practice' in Andrew Day et al (eds), *Domestic Violence: Working with Men* (Federation Press, 2009) 23; *National Legal Response* (n 14) 1355–6 [29.25]–[29.26].

62 *National Legal Response* (n 14) 1358–9 [29.39]–[29.42].

Directorate#3 agreed, but reiterated that care must be taken in this area, given the potential for increasing a person's risk of violence through information-sharing: 'And if it's in [the] interest of child safety, then more information-sharing [rather] than less is good. When it comes to sharing information about adults, that needs to be with their full consent and understanding [of] what the implications of that are.'

Directorate#5 also felt that

> our links in terms of understanding data are good, although it's primarily managed in through a single pipe … the key issue for me is the communication and cooperation between a range of stakeholders and ensuring we've got the appropriate levels of wraparound services and support.

C *Ideas for Improving Inter-Agency Cooperation and Information-Sharing*

Several suggestions were made to improve inter-agency communication as this was clearly a matter of great concern to the participants. JUST#1 suggested that communication, collaboration and engagement with affected persons and perpetrators could be improved by co-locating the primary agencies and support services involved in the FV response. Further, in the context of support services, representatives from the FV and intersectional sectors pointed to the need for increased resources. For instance, FVW#1 felt that legislative changes were necessary; however, without additional resources to support the Act, more individuals would need support and might have to wait longer for it, as 'the service system isn't expanding at the right rate to then be able to capture the fallout of changes in legislation'. INTER#1 had reservations that 'the mainstream family violence sector … hasn't been set up, or is not really equipped to understand and, I guess, make efforts to prevent or respond to FV against gender-diverse people'.

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

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

JUST#2 was concerned about

> making sure that … we're providing legislation that can support services as well, in relation to doing the work, so victim services and perpetrator services and things like that. If we make any legislative changes, we actually make sure that there's service coverage to do that.

For FVW#5, having FV services included in a risk management plan is essential, 'because we know more about the woman than the police and other criminal justice

agencies will ever know … but we're not considered when they're doing their risk management, safety planning. … I think it should be part of the legislation.'

Others discussed the importance of having an appropriate legislative framework and knowledge about what is — and is not — permitted. JUST#14 felt

> there was quite a serious misunderstanding of people's abilities within the current legislative patchwork quilt. … [W]e could change the legislation, but it would just add another layer, I think, to the patchwork quilt of perhaps not necessarily understanding, unless we could make that layer simplify all of the other layers.

For some, improved inter-agency communication was seen to be necessary in the context of how contact with partners or ex-partners is managed by those involved in perpetrator programs.[63] As discussed by JUST#1:

> [W]here engagement in perpetrator programs or other forms of reconciliation are desired, judicial orders may permit limited or supervised contact between parties. … [this] supports rehabilitative efforts, [but] it is important that any effort to re-establish contact between parties is undertaken in consultation with all agencies involved to ensure that judicial orders are adhered to and the safety of FV victims remains a paramount consideration.

Several stakeholders commented on the need to share information amongst the different stakeholder agencies in the absence of criminal charges:

> I'm hopeful that some of the work of the Family Safety Hub[64] will allow us to do that, because we do need to share this information … so we do need a secure mechanism to share this when there is [sic] still no criminal charges in terms of sharing information about the risk of the perpetrator that keeps the organisation safe as well and doesn't make us exposed. (FVW#4)

JUST#17 felt that 'maybe the way forward is working out what people need to know and how they're going to get the information'. FVNW#2 felt the need for information extended beyond FV stakeholders to the

> Education [Directorate] and some of those more community-based periphery services that are engaging with these families because … from the perspective of being able to share risk information and help that be a little bit more visible.

It was also suggested that using memoranda of understanding between key stakeholders — such as the police, ACT government directorates, including CYPS and the Victims of Crime Commission, DVCS and other support agencies — would help to formalise the arrangements under which information was shared by

63 See *FVA* (n 1) s 38(2)(n).

64 The Family Safety Hub seeks to 'facilitate the development of new and innovative solutions aimed at addressing the needs of families who are impacted by [FV]': Australian Capital Territory Government, 'Family Safety Hub Launched with First Big Challenge' (Media Release, 11 May 2018). See also Australian Capital Territory Government, 'Family Safety Hub', *Community Services* (Web Page, 12 July 2021) <https://www.communityservices.act.gov.au/safer-families/family-safety-hub>.

parties. Another proposal was to adopt processes similar to those used for registrations to work with vulnerable people.[65] In addition, better use of technology and databases to support and facilitate information-sharing was encouraged. JUST#13 referred to a recent case involving family law and FV and explained how a number of agencies conducted 'an information-sharing exercise', with the client's permission, adding that 'the group really made us [bring] all that information together. … This could be done by email, rather than having the key players in a room together'.

VII CONCLUSION

We found mixed responses from those at the professional FV coalface concerning how well the amended black letter law and its implementation have met the safety needs of affected persons in the ACT.

Some looked at the broader question of whether it is possible for any piece of legislation to protect against FV:

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

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

In fact, Directorate#3 pondered whether those affected by FV might actually be at increased risk of violence, with FV becoming a more public and triggering issue:

> [W]hen an ad campaign is being run … as soon as he sees that he just goes [violent]. So, it's a bit of a wicked problem, isn't it? Because if we don't talk about it, then how do we ever do anything about it? But if we do talk about it, certainly that seems to escalate risk for a lot of women.

FVW#4 also commented that, although some people might feel better protected, 'the reality of what we see is telling us that they are not protected … they are still extremely vulnerable, at high risk. They're still not offered the protection you would think at that point'.

Looking at a more micro-level of the Act in particular, and whether the professional stakeholders had observed improved protection for affected persons, there were some fairly positive views, including that the legislation offered a broader definition of FV than the previous legislation, the increased ease and speed of obtaining an interim order, and improvements in inter-agency communication,

65 Australian Capital Territory Government, 'Working with Vulnerable People (WWVP) Registration', *Access Canberra* (Web Page) <https://www.accesscanberra.act.gov.au/s/article/working-with-vulnerable-people-wwvp-registration-tab-overview>.

particularly with Legal Aid. However, for the most part, stakeholders, with some diversity in views appearing to derive from occupational-related experiences, observations and/or values, were at best ambivalent and at worst highly critical when reflecting on their experiences. Many participants had concerns about the ambiguity of some provisions, the scope of the people protected and abusive behaviours prohibited under the Act, the lack of police enforcement of FVOs, and resourcing issues. In addition, most of the participants did not see a direct link between the legislative reforms and cultural change, either outside of or within the courts. There was also agreement across sectors that the definition of FV should be expanded to include technological abuse. As noted above, this latter issue has now been addressed, with effect from August 2022.

The main reasons the impact of the *FVA* was seen as limited concern its translation into operation, with most issues deriving from the prevailing culture and/or systems in place. For example, some types of abuse added to the new definition have not been recognised adequately by police or the courts. Issues with service of orders were also perceived as limiting the extent of protection afforded by the Act. However, the primary concern, which was fairly universally recognised, related to systemic breakdowns in communication and information-sharing. One FV worker went so far as to describe the situation as 'a complete systemic failure in considering and including victims in their thoughts and practices in relation to communication'.

This is without a doubt our most important conclusion. There is truth in the adage that information is power. Each sector has the same aim — to protect against FV. However, to do so, the different parts of the system must work collaboratively. The irony is that, although everyone is primarily concerned with the safety of those affected by FV, the flaws in inter-agency implementation can result in the opposite actually eventuating. Consequently, most stakeholders expressed concerns about how effective the Act is in providing protection to those impacted by FV and promoting justice. At best, they were equivocal in relation to what they had observed, in terms of the safety of those experiencing FV. As one FVW worker eloquently noted:

> [W]e do not share, we do not support, we do not speak, we do not empower each other, we do not rise above the confines of our own interests and organisations, we do not make changes and we do not progress together to improve the treatment of women and children.

In 2017, Taylor et al[66] summarised key findings from the final report from the *COAG Advisory Panel on Reducing Violence against Women and Their Children*[67]

66 Annabel Taylor et al, 'Domestic and Family Violence Protection Orders in Australia: An Investigation of Information-Sharing and Enforcement with a Focus on Interstate Orders' (Final Report, Australia's National Research Organisation for Women's Safety, November 2017) 8.

67 *COAG Advisory Panel on Reducing Violence against Women and Their Children* (Final Report, 2016) ('*COAG Advisory Panel Final Report*').

and the Victorian *Royal Commission into Family Violence*.[68] The following findings are of particular relevance to the ACT context:

- There is a high level of demand on frontline response services with services ill-equipped to respond.
- Greater consistency in policing is required to improve victims' safety.
- Complex legal provisions … are combined with uneven understanding of DFV impact on the legal response. …
- [There should be] [i]nvestment in developing integrated responses and coordination between services to create seamless service provision for victims and accountability of perpetrators.
- Greater information-sharing is required in order to facilitate effective responses to women and children.
- A stronger focus is needed on the situation of children in the context of DFV, and on recognising their needs.
- The development of a common risk assessment framework is needed in order to strengthen integrated responses and perpetrator accountability.
- There is a need for attitudinal change in terms of the minimisation of violence against women and children where more complex forms of violence are insufficiently recognised.[69]

Our research presents the first comprehensive analysis of the implementation of the ACT FV legislation introduced in 2016. This confirms that, although a piece of legislation can be improved, careful attention must be given to its operation, being mindful of the potential gap between black letter law and its implementation. Regrettably, it is clearly a case of *plus ça change*, as our findings echo and reinforce the earlier research. Particularly in the context of the COVID-19 pandemic and the rise in DFV, such problematic protection under the legislation is simply not good enough. As Taylor et al asserted, Australian governments' 'continued commitment to legislative reforms, information-sharing improvements, and integrated responses is critical to improving the safety of victims'.[70] We can only hope that the *National Plan to End Violence against Women and Children 2022–2032*,[71] announced in October 2022, signals a genuine commitment to addressing the issues raised in this paper and that the research presented here will assist in the 'shared vision … to end gender-based violence in one generation'.[72]

68 *Royal Commission into Family Violence* (n 49).

69 Taylor et al (n 66) 8, citing *COAG Advisory Panel Final Report* (n 67) and *Royal Commission into Family Violence* (n 49).

70 Taylor et al (n 66) 6.

71 Department of Social Services (Cth), *National Plan to End Violence against Women and Children 2022–2032* (Report, 17 October 2022).

72 Ibid 6.