



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Family Law Amendment (Federal Family Violence Orders) Bill 2021**

(Public)

WEDNESDAY, 14 JULY 2021

CANBERRA

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Wednesday, 14 July 2021**

**Members in attendance:** Senators Henderson [by audio link], Hughes [by audio link], McAllister [by audio link], Scarr [by audio link], Waters [by video link].

**Terms of Reference for the Inquiry:**

To inquire into and report on:

Family Law Amendment (Federal Family Violence Orders) Bill 2021.

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**BOTTRELL, Mr Dan, President, Family Law Practitioners Association of Queensland [by video link]**

**BRASCH, Dr Jacoba QC, President, Law Council of Australia [by video link]**

**DART, Ms Clare, Executive Committee Member, Family Law Practitioners Association of Queensland [by video link]**

**SIMPSON, Ms Di, Chair, Family Law Section, Law Council of Australia [by video link]**

**Committee met at 12:05**

**CHAIR (Senator Henderson):** I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the provisions of the Family Law Amendment (Federal Family Violence Orders) Bill 2021. The committee's proceedings today will follow the program as circulated. These are public proceedings being broadcast live via the web and in Parliament House. I remind witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. The committee prefers evidence to be given in public. But, under the Senate's resolutions, witnesses have the right to request to be heard in confidence, which is described as being in camera. If you are a witness today and intend to request to give evidence in camera, please bring this to the attention of the secretariat as soon as possible. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken. The committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

With the formalities over, I now welcome representatives from the Family Law Practitioners Association of Queensland and the Law Council of Australia. Thank you so much for your time in giving evidence today. Information about parliamentary privilege has been provided to you and is available from the secretariat. The committee has received your submissions, which it has numbered 9 and 32 respectively. If you wish to make an opening statement, at the committee's request it should be provided to the secretariat in writing because we do have a slightly truncated hearing today. Do you wish to make any corrections to your submissions?

**Dr Brasch:** We do have some amendments to make to our written submission. We now understand that the Family Law Amendment (Federal Family Violence Orders) Bill 2021 will only allow for final federal family violence orders, not interim orders. So the concentration in our written submission about interim orders is no longer necessary.

**CHAIR:** Thank you. Mr Bottrell?

**Mr Bottrell:** FLPA has no amendments to make to our submission.

**CHAIR:** Thank you. I will kick off proceedings by asking you each a couple of questions, starting with the Law Council. Could you describe your response to the bill and summarise any concerns you might have.

**Dr Brasch:** We strongly support the stated intent of the bill, which is to remove the need for vulnerable people to navigate through separate court systems—and each time they do that they have to retell their story. But we have some reservations. We don't know what the court process will look like, or the application process. And there are no interim orders; it is only a final federal family violence order. People need protection urgently; it's usually in the lead-up to separation, at separation or in the period after separation that people need protection. Given that this bill is only for final orders, we can see people still going to the states and the territories for that urgent relief—and that's fine; that system can give people that urgent relief.

We're also concerned about the resources that might be used in the Federal Circuit Court and the Family Court. The Family Court and the Federal Circuit Court are very busy, as we know. No doubt, you will consult closely with the courts about how this will work and what it is going to look like to not overburden the courts with these applications. It might be useful to trial the scheme in one or two registries, see how it goes and make amendments. But the fundamental issue for us is that people need urgent action with family violence orders; if it is a final hearing, that can be two or three years down the track. I'd invite Ms Simpson to add something if that's okay.

**Ms Simpson:** I'd just like to amplify the comments made by Dr Brasch. The intent of the bill is widely supported and the process remains somewhat opaque. So for those of us in the wings who are waiting to understand how we support our clients in navigating this new process, and how we support the courts in embarking upon this, we have remaining uncertainty about how we will actually proceed in the court process.

While it is recognised that only a final order can be sought and granted, it is not yet clear if the court may intend to build a separate stream such that a final federal family violence order hearing could occur separately from the final hearing of the related family law matters. So it may be that the court does intend to respond to what Dr Brasch and others have identified as being a need with respect to urgent remedies by effectively carving out a new list or a new process that might make it possible for a final hearing of the FFVO matter to occur separately from the conclusion of the other matters before the court. So where we don't yet know if that will be possible, the reservations that have been expressed by Dr Brasch and others remain of concern: how will the intent of the bill actually be realised if people continue to have to go to two different systems in order to obtain the urgent relief they need?

**CHAIR:** As I understand it, there's nothing in the bill which prevents final orders being made at a time which may be different from final orders being made in relation to other proceedings which may be on foot, whether they are parenting matters, property matters or other related matters. So what is to stop the court making a final order at a period of time which is much earlier than a final hearing in relation to other proceedings?

**Ms Simpson:** My answer to that would be: we don't know. It would appear there is nothing to stop the court from doing that, except, perhaps, the question of resources and how the court will be able to provide the necessary judicial and support resources to make that possible. If indeed that became the intended pathway, then I would submit that it is likely there will be a significant uptake of that opportunity, and the resource demands upon the court in that event would be very significant. So I have an understanding of the funding that has been allocated at this stage, in the preliminary stage of the development of the new system or the new scheme. But if the court does embrace the idea of a separate final hearing for federal family violence orders, it's my understanding that there will be significant uptake of that and the resource demand will be very significant.

**CHAIR:** Ms Simpson, I assume that, generally speaking, people seeking a final order in relation to family violence matters will be in the court in any event and, therefore, they might seek that a final hearing is bought forward such that the court can make a practical decision in relation to a family violence order well in advance of, perhaps, other matters or other applications on foot. So I put to you: wouldn't the court take a practical and expedited view of these matters, particularly given the court is very cognizant of the risks of family violence? It's a very big issue in family law proceedings generally. I guess I'm just questioning the position of the Law Council that family violence orders could be made two or three years down the track. There is no such provision in the bill which provides for that, if you like.

**Ms Simpson:** Senator, we are probably in agreement about that issue, in that what I was attempting to convey was that if the court does determine to make it possible for the separate and timely or earlier hearing of applications relating to federal family violence order matters, then the remedy is possible. My submission is that we don't yet know if the court will be able to do that. I share your view that the court takes family violence matters very seriously, but we also know that resourcing constraints have made it difficult for the court to be as responsive to serious family violence matters as it would like to be, and a number of initiatives are being explored and trialled by the court to try to respond to that. But the idea of creating a separate and timely hearing to determine an application for federal family violence orders ahead of the conclusion of the rest of the family law matter—it may well be the pathway the court chooses to take, but it will add a very significant resource pressure.

**CHAIR:** But the court has current powers to make personal protection orders, so they can be made in proceedings at any time. What's significant about this bill is that a breach of a federal family violence order would become a criminal offence. The court hasn't previously had that power. This is what this bill is all about. I appreciate that that's why there is broad support for the bill, and I obviously think this is very important reform. The court does have current powers, whether they're injunctive or otherwise. It has taken those powers very seriously, but there are limitations under the law which are being addressed by this bill. Isn't that correct?

**Ms Simpson:** Well, this bill is creating an entirely new type of order, so this proposed order will be in addition to the court's existing power to make personal protection injunctions. Certainly the additional consequence of this bill is that a breach of a federal family violence order will be a criminal matter and may result in arrest and prosecution for a breach. So, yes—

**CHAIR:** But isn't what's really significant about this that, if there is a breach, the police have jurisdiction to act? Previously, of course, the police haven't had the jurisdiction, so this is an enormous leap forward in terms of making sure that, when someone does obtain such an order, they can get that urgent help they need to enforce the order.

**Ms Simpson:** Yes, but you need to have the order made to receive the benefits of the protections. The current drafting of the bill, absent information from the court as to how they will build the system, means that those of us observing this remain unclear about the actual operation and whether our vulnerable clients will be able to obtain

this type of powerful order at an early point when they need it. We all know, practising in family law, that there can be points of intense crisis, often, as Dr Brasch has observed, at the time of separation. But of course it also occurs throughout a matter. A system that allows the court to respond in a timely fashion to changing and, at times, very concerning circumstances is important. The state systems will remain in place, so the remedy will be available there if there aren't applications for an FFVO in the federal courts. But my concern is that we may be at slightly cross-purposes, Senator. The nature of the order being proposed certainly has power and attraction. The real concern is as to how readily a vulnerable person will be able to obtain one. If, in the most extreme scenario, they had to wait two or three years for the conclusion of their family law matter, then it would be of limited comfort. If, however, the court builds a system that allows for the hearing of a final federal family violence order at an earlier point, then I share your view that the remedy may be obviously more readily available and a greater comfort to those who are in need.

**CHAIR:** Thank you very much. I'm now going to hand over to other senators to ask questions. I provide the call to Senator Waters.

**Senator WATERS:** Thank you to the witnesses for being here with us today and bearing through the technological hurdles that seem inevitable in our COVID times. I read your suggestions and your submission with great interest and I intend to ask of the department a number of your queries, so hopefully we will get some answers to issues like: Will there be a trial? Will they appoint more judges? Will there be more resourcing? Will there be a separate list? That is a very important point, particularly in relation to the timeliness of these orders being able to be issued. I'm just thanking you for the work that has gone into your submission. I certainly share some of your questions and hope to get an answer to them. In relation to resourcing, Ms Simpson—

**CHAIR:** Senator Waters, I am sorry to interrupt you but we're getting a little bit of interference on your phone. Are you able to come off loudspeaker because the line is a bit wobbly?

**Senator WATERS:** Chair, I am on the video call. Can I humbly suggest you pop your phone on mute. I'm not sure if that is able to happen. The audio has been quite crackly the whole time so far.

**CHAIR:** No worries. Thank you.

**Senator WATERS:** Let's give that and try and hopefully that improves things. Firstly to the resourcing issue, Ms Simpson, you described the need for very significant resources to make sure that the court has the ability to deliver on this new facility. Does anyone have any idea of an estimation of the amount of resourcing that would be appropriate to meet this new power?

**Ms Simpson:** My observation is that if we take the starting point of the number of personal protection injunctions that are granted in a year—and I understand that data may suggest it's something like 400 or thereabouts—it's my submission that if these orders are going to be available in a timely fashion, so if a separate stream, or a separate list, will allow the determination of those matters earlier than the conclusion of the final proceedings, then the uptake will be much more significant than 400 matters. It's my submission that we will encounter what I have previously described as a 'tsunami of additional matters'. One has to also think about how will this hearing occur in that, for example, if a judge is going to conduct a contested hearing separately to the conclusion of a family law matter then that judge will be asked to make findings about the disputed matters between the parties in order to be able to conclude and make a determination. Part of our concern, therefore, remains what happens to the future conduct of that matter? It would be likely that the judicial officer who has heard the federal family violence order matter, made findings and determinations and made an order, would not be able to hear the balance of the parties family law matter because one or the other party would object to them doing so on the basis of adverse findings having been made.

If you like, it could be compared to what happens in a contravention hearing when someone is asserting a breach of orders. After those matters are heard it's very common for a party, against whom adverse findings have been made, to then indicate that they remain uncomfortable about that particular judge hearing the future conduct of the matter. I regret that I can only speak in very approximate terms, but I do caution that if it's possible to build an entirely responsive system, to ensure that victims of family violence are able to have these matters determined in a timely fashion, then it is likely that many, many people will take this up.

We know that about 70 per cent of matters before the court involve allegations of family violence. Add to that what we know about self-represented parties. Add to that what we know has happened with respect to the section 102NA cross-examination scheme. That raises a separate issue. One would think that people participating in these hearings would need the protections of section 102NA. So there will be further resourcing demands that will flow from that.

Part of our submission included expressing concern with respect to resourcing for legal aid, resourcing for independent children's lawyers—particularly noting the singular role that they are being given to actually bring applications independently of the parties. It's my submission that this may, in fact, be a very significant resource imposed upon the court. It would appear that at the moment insufficient resources have been allocated. However, I say that with the qualifier that I don't yet know what is intended in terms of the implementation of the bill.

**Dr Brasch:** Senator Waters, if I could, I'd add that I'm not only president of the Law Council but also a family law barrister. This is another issue about resourcing. The personal protection injunctions carry no penalty, so you can say to a client, 'You can accept that on a without-admissions basis.' But, because of—and rightly so—the significant penalties that are proposed under this bill for the federal family violence orders, I would have to be telling clients not to consent to them, to contest them. I can see a lot of matters going to trial where parties chance their arm to have the order not made, because of those penalties. It's very much like in criminal law. That's why you have so many criminal law trials. I'd just add that on to what Ms Simpson said.

**Senator WATERS:** That's a nice segue into the potential conflict between parallel state family violence orders and these new federal criminal ones, which your submission goes into—the concern about whether there will be sequential impacts, which will go first and will that have implications for the other. Again, we'll seek some clarity from the department on that. I have so many questions, and I've only got the 10 minutes, which we're probably mostly through. FLPA, we haven't heard from you yet. In your submission you said you don't support the order being a long one; you think a five-year review would be appropriate. Can I ask two questions about the flip side of that? Firstly, given that you don't want to retraumatise survivors on an ongoing basis in such a review, how do you balance the suggestion of a five-year review period with the protection of the survivor and the desire to avoid retraumatisation? Conversely, how do you mitigate against the risk of a misidentified perpetrator, particularly where the applicant has a lot of resources and the misidentified perpetrator does not? How do we stop this from being weaponised?

**Ms Dart:** In relation to the potential of having a review, the concern that we had was that the orders could potentially be in place for up to, effectively, 18 years. There is a lot that can happen, in effect, for a family or for parties in a particular matter within that time period. Certainly, we're not opposing it being longer than five years, but we're suggesting or recommending that there be something incorporated into the bill so it's clear as to what considerations were taken into account in relation to that. There is also always the capacity for orders to be extended if they need to be. But, to some extent, a lot can happen in that period of time, and the concern was that just having an order in place with potential significant consequences might potentially lead to criminal charges in circumstances where the parties may not intend that to occur. It may be that in five years time, for example, the parties have both undertaken some work, their co-parenting relationship may have significantly improved and there are parameters in place that have resulted in the risk of family violence being reduced significantly, but there may be some consequences for them if they were to, for example, breach the order unintentionally or in circumstances where both parties have agreed to that extent of communication.

We also share the concerns that have already been raised by the Law Council of Australia in relation to the resourcing issues, the lack of temporary protection orders and the need for urgent protection for parties. Certainly, you will have seen in our submission that we see that it's likely that people will need to access the state system to obtain urgent protection, much as they do currently. The reality in Queensland is that you can file your application and obtain a temporary protection order the same day, and that's something that obviously isn't provided for in the current bill. I agree with the comments made by Dr Brasch in relation to it being more likely that parties are going to want to run matters to a final hearing to have findings made in relation to those matters. That is a challenge in relation to the resourcing issue you've already mentioned, but it's important for the court to ascertain who might be most in need of protection, and a final hearing would need to take place in order for the court to determine that. Somewhat linked to that is, under the current Queensland legislation, parties can consent without admission to protection orders being made. There doesn't seem to be a similar provision for that in the bill currently. Particularly if you're looking at trying to deal with getting some parties protection at that earlier stage, that doesn't prevent the court in terms of making findings about family violence issues in the context of determining the parenting or property matters down the track. But at least having a provision to enable that to occur would enable some protections to be given to parties at an earlier stage in the proceedings, before the final hearing is able to take place and the real testing of the evidence.

**Mr Bottrell:** Has that answered the second part of your question, Senator?

**Senator WATERS:** I think as much as possible, yes, thank you. I'm probably likely to only have one more question, so can I intercede and just ask you to address the issue of differing definitions of 'family violence' across



all the various federal and state jurisdictions? Are there any risks for the implementation of this bill if there's not a harmonised—an ideally harmonised—definition of 'family violence' across all the jurisdictions?

**Dr Brasch:** That is something the Law Council—and we note the government has responded to that recently—has recently had a round table about. I convened a round table of all of the law societies and bar associations to see what the core definitions are and whether we can then be agitating for a unified or a consistent definition. Two things arise from that. It would be a little outrageous if something was 'family violence' in one jurisdiction but not in another. That would not be in the spirit of what we're all wanting to work towards, which is eliminating this scourge. There's a second aspect to consistency, and that's research. With research, we understand things. For example, in some states 'stalking' is not in the family violence act, but it's in the criminal code. So how are you comparing apples with apples, or are you comparing apples with oranges? The importance of research is that it gives us a better insight and a better understanding of what programs should look like et cetera. The Law Council is very supportive of a national register of family violence orders. That exists, but, again, inconsistency there—something might be 'family violence' in one place but not another, if somebody's moved—would not be the way we'd be wanting to go.

**CHAIR:** Alright. We're going to have to keep moving.

**Senator WATERS:** Will the absence of that definition impede the implementation of this new FVO?

**Dr Brasch:** I think Senator Henderson just—

**CHAIR:** Could you just repeat that final question, Senator Waters, and then we can finish up there?

**Senator WATERS:** It was just whether or not you felt the absence of harmonised definitions at the moment will impede the implementation of this federal family violence order, and do you think we need to get the definitions harmonised before the FVOs are rolled out?

**Dr Brasch:** Ms Simpson, can you deal with that?

**Ms Simpson:** It's my submission that it would be appropriate for the goal of harmonisation of language and definitions to continue, but I can't indicate to you that the absence of that would impede the sensible operation of the scheme at this stage, Senator.

**Senator WATERS:** Thanks very much. Thank you, Chair.

**CHAIR:** Thank you very much, Senator Waters. I believe that Senator McAllister has some questions.

**Senator McALLISTER:** Thank you very much to both organisations for your submissions. I should indicate that I'm on a number of committees that benefit from the Law Council's enormous volume of work in supporting parliamentary committees. I'm very grateful for the level of detail and rigour that you apply to the work that you do for us. I won't go through the detail, but I do want to ask you a couple of questions about the process. When was the Law Council first consulted about this bill?

**Dr Brasch:** Thank you for your kind words, Senator. Unless Ms Simpson happens to know the answer, I don't have that at my fingertips either. Perhaps we could take that on notice.

**Senator McALLISTER:** That's okay. Was it before or after the bill was introduced to the House of Representatives? It was introduced on 24 March.

**Ms Simpson:** It's my recollection—I can't speak to dates—that it was after public notice of the bill was given.

**Senator McALLISTER:** I thought so. So you weren't consulted before it got into the parliament. Your submission raises a number of uncertainties about the how the bill will operate—constraints on judges making findings of fact, the role of children in giving evidence, the role of the independent children's lawyers, operational issues around the jurisdiction in which someone might seek enforcement or remedy, whether or not the rules of evidence apply. They are very substantial uncertainties. Is it usual for a bill to have quite this much uncertainty embedded in it?

**Ms Simpson:** I would suggest that we are probably not the people to answer that, given that we respond to bills when they are relevant to matters we are interested in. Certainly from the family law section, our experience of responding to bills is that we will respond to the bill as presented. The question of whether this degree of uncertainty as usual or otherwise I think is, with respect, a question perhaps to be directed to those who are drafting the bill.

**Senator McALLISTER:** You have included as part of your submission, Ms Simpson, the letter that you wrote to the Attorney-General's Department back in May with a series of quite detailed questions about how the bill is intended to operate. Has the department responded to the issues that you raised in that letter, which runs to four pages?

**Ms Simpson:** Yes. The department very helpfully engaged in a direct fashion with us in response to that letter. Since then, representatives of the Attorney-General's Department have facilitated an additional discussion with respect to a number of our concerns that had been not only raised in that letter but raised in our submission, so it's appropriate that I acknowledge the full engagement that members of the department have been prepared to offer to us. Can I again note, as Dr Brasch noted at the beginning of our session this afternoon, that some of the matters raised in that letter have since been addressed, or at least our concerns about certain matters have been addressed, by the department indicating, for example, that it is not the intention that there would be a separate interim hearing process in the bill. A number of our concerns related to the impact of interim hearings and how those matters would be managed.

**Senator McALLISTER:** Have any of the other matters been resolved?

**Ms Simpson:** It may be a question of how one defines 'resolution'. I certainly can speak of my own engagement with members of the Attorney-General's Department. I found that process to be a very helpful one. They were generous in their time and generous in trying to assist me, on behalf of the family law section, to better understand what was being considered. They were very receptive also to the continued expression of the reservations that we have expressed in our submission and amplified in today's hearing, with respect to the difficulty of commenting sensibly upon a significant or what may be a significant reform in circumstances where we just don't know how it is proposed that it will be implemented and what that will be like for our clients.

**Dr Brasch:** Senator McAllister, I can answer for you now the question I asked to take on notice. I've had that provided to me. The Law Council were advised on 1 April that the bill had been introduced on 24 March.

**Senator McALLISTER:** Thanks very much. So, with the exception of those aspects of your recommendation about dealing with interim protection orders, the remainder of your recommendations for changes to the bill stand?

**Ms Simpson:** I would, again, need to speak in generalisations because I haven't prior to this hearing undertaken a line-by-line or paragraph-by-paragraph revisiting of what we had provided in the written submission versus our improved understanding of what is being proposed under the bill. The matters that Dr Brasch and I have addressed today remain of primary concern to us. But that is not to say that there are not ancillary concerns that are expressed in our submission, which, with respect, will remain live until we have a better understanding of the detail of the final legislation and then how it is proposed to be implemented.

Senator, if I may, you touched on two of those matters in the preface to your first question. We have expressed in our submission concerns about the way hearings will be conducted and the nature of hearings. Our submission addresses that in the state systems it is, sadly, quite common for children to be cross-examined if they are witnesses to relevant family violence events. In the family law system, it is a contempt of court to attempt to have a child give evidence if leave of the court has not been granted, and it is extraordinarily rare for—one would say it almost never occurs—for a child to be giving evidence in family law proceedings. Whether or not the hearings can become something very significant and substantial, we have spoken in our submission of the risk of tactical advantage being taken and a resource imbalance between parties. It may be possible, for example, for a hearing relating to the final federal family violence order matter to be highly contested and for a party who is at risk of having an order being made, with very serious consequences now, insisting that, of course, they should be able to test all of the evidence. We identify that in the state courts that can sometimes take days. Again, it's a circular way of coming back to the resource concern that we have in circumstances where we don't yet know how the court will propose to conduct these matters.

**Dr Brasch:** I did have an opening statement prepared which identified those things, but I was mindful of the chair's start: that, if it hadn't been provided to you beforehand, it wasn't to be addressed. But I've subsequently had that sent to the secretariat. It's one page and a couple of lines on the second page, and it will set out our remaining concerns.

**CHAIR:** Thank you very much for that. We have received that.

**Senator McALLISTER:** Thanks very much. This committee will need to make recommendations to government about whether or not the bill should be passed. In your view is it necessary to amend this bill if it is to achieve its objective of making women and children safer?

**Dr Brasch:** I think you'll be assisted in the answer to that with the opening statement—the uncertainties that still exist that I identify in what I'm calling the opening statement. Any clarity that can be given makes for better legislation. Uncertainty is ultimately not helpful for the very parties that we want to protect: the women and the children. So for any clarity—for example, in the one Senator Henderson raised before—I agree; there's nothing stopping a judge from having a final hearing of these matters before the property or the parenting. Making that

clear, even in a notation in the bill, would in itself be of great assistance. Clear legislation and addressing the many uncertainties that we still identify is what we should be aiming for.

**Senator McALLISTER:** Thanks very much. I now have your opening statement, and I'm reviewing it. Chair, I'll leave it there. Can I thank the witnesses for their written submissions and their time this morning.

**CHAIR:** That brings to an end questions to the Family Law Practitioners Association of Queensland and the Law Council of Australia. We thank you very much for your time today. I also reiterate our appreciation for the considerable amount of work that you have put into your submissions and in giving evidence today.

**BALTINS, Ms Anna, Solicitor In Charge, Domestic Violence Unit, Legal Aid New South Wales [by audio link]**

**CANNY, Ms Gabrielle, Director, Legal Services Commission of South Australia [by video link]**

**COLQUHOUN, Ms Alexandra, Acting Director, Family Law, Legal Aid New South Wales [by video link]**

**KENT, Mr Ashley, Manager, Family Law Division, Legal Services Commission of South Australia [by video link]**

[12:51]

**CHAIR:** We're now going to move to the Legal Services Commission of South Australia and Legal Aid New South Wales. I welcome representatives of both bodies. Thank you so much for taking the time to give evidence today. Information about parliamentary privilege has been provided to you and is available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state or territory shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The committee has received your submissions—submissions 20 and 34, respectfully. If you wish to make an opening statement, again, at the committee's request, we would appreciate if you could circulate that to all senators due to the truncated nature of today's hearing. Could you please clarify if you wish to make any corrections to your submissions.

**Ms Canny:** The commission does not wish to provide a statement, nor do we have any corrections for our submission.

**CHAIR:** Legal Aid New South Wales, do you have any corrections to your submission or opening statement, if you have one?

**Ms Colquhoun:** We do not wish to make an opening statement and have no corrections.

**CHAIR:** Thank you again very much for appearing today to give evidence and for your work in your submissions. We are very, very grateful. To both organisations, could I again ask for an overview of your response to the bill and any suggestions or concerns that you have in relation to the bill.

**Ms Canny:** If it's okay, I'll commence. The Legal Services Commission of South Australia supports any initiatives that will improve the safety of women and children. Unfortunately, our work demonstrates on a daily basis the disadvantage that domestic violence places upon women and children in either the state legal system or the Commonwealth legal system. So we very much encourage anything that can be done to improve that situation and to provide more benefits to our society.

We do think that the work that's been done, led by the Commonwealth Attorney-General's Department, has been beneficial. They have had experts around the table working on this initiative for a long time. But we do have continuing concerns about perhaps the implementation and some of the aspects of this bill, which we have set out in our submission. I will now hand over to Ashley Kent to make a couple of opening comments.

**Mr Kent:** Some of the concerns that we have regard the role of the independent children's lawyer in these proceedings. It doesn't make it clear in the legislation whether the independent children's lawyer could be expected to bring an application for an intervention order if one of the parties were in a situation where they were not able to obtain legal aid. Frequently, legal aid is not granted in state intervention orders, and the current policy of the commission is that it's not granted. Whether that would increase the responsibility for legal aid down the track is a matter that concerns us greatly. But, if an independent children's lawyer is to bring an application, that puts in significant doubt the independence of the independent children's lawyer. They're supposed to be seen to be independent of the parties and not taking sides. If the independent children's lawyer is put into a situation where they feel they have to make the application for the intervention order, that certainly is going to throw into doubt the independence of that lawyer.

Another concern that we have is that the state intervention orders, here in South Australia, at least, are frequently resolved on the basis that the party against whom the intervention order is being sought agrees to have the intervention order put in place but disputes the necessity for the intervention order being made. That's frequently done and accepted by the judicial officers. However, in a Family Court setting, parties are not going to be so willing to do that, because, if they're agreeing to this intervention order, they would also normally be assumed to be agreeing to the allegations that are being made in the other party's documents. So, to me, that

seems like there would be the requirement for any intervention order that's being opposed to have a hearing, which would certainly increase the workload of the court to try and resolve those matters. They are just a couple of the concerns we have that are not clear from the legislation as proposed.

**CHAIR:** Before I go to Legal Aid New South Wales, I just want to clarify something. The Legal Services Commission of South Australia made reference to women and children in relation to this bill and federal family violence orders which would be available under this bill, should it be passed. But, of course, this bill applies to men, women and children. While I appreciate that the vast majority of victims of family violence, based on the statistics, are women and children, it's important to point out that some men are also victims of family violence. I now go to Legal Aid New South Wales and, again, ask for your view of the bill and, in summary, any concerns that you have or improvements that you would like to see.

**Ms Colquhoun:** In summary, I would like to echo Ms Canny's observations and to confirm that we support any measure which provides victims of family violence with protection from incidents of family violence and other harm. We know that often the commencement of family law proceedings brings to light for the first time a history of family violence. And sometimes our clients won't have recognised that conduct as family violence until they seek legal advice about it, so allowing victims one forum to address their needs and ensuring that they don't have to tell their story twice is really important and a positive thing, in our perspective. We worry, though, about the potential for confusion, complexities and inconsistencies, which we've addressed in further detail in our submission. In summary, we would say that the devil is in the detail. My colleague Ms Baltins is well-placed to provide some observations on some of those concerns that we have.

**CHAIR:** Ms Baltins, do you have anything to add to Ms Colquhoun's evidence there?

**Ms Baltins:** I can answer any questions that are for Legal Aid NSW, if needed.

**CHAIR:** Nothing further to add at the moment?

**Ms Baltins:** In terms of what Ms Colquhoun said, I'd just like to also echo that we are concerned about potential impacts on Aboriginal and Torres Strait Islander communities and making sure that this is a system that allows for federal family violence orders to be made in a culturally appropriate and safe manner for a community that is already over-policed. We're concerned also about the duplication of state based and Commonwealth offences and the impact that that will have on multiple communities—but, again, particularly on Aboriginal and Torres Strait Islander communities—where a litigant may find themselves subject to a breach of a state based order and also a federal family violence order and faced with a duplication of criminal offences. I'd just like to echo concerns in relation to complexity and confusion and making sure, from a victim's perspective, that the victim is not faced with a situation where it is unclear—where there are overlapping federal and state based orders and, potentially, injunctive relief made pursuant to the family law orders—and they're unsure which order is there for their protection. There are also concerns about what impact this has on enforcement and whether there needs to be clarity around whether state based or Commonwealth enforcement agencies will have responsibility and which prosecuting agency will also have responsibility and whether that will cause delays. But we also don't want to open the door for defendants who breach these orders to use the complexity, and often multiple overlapping orders that may arise with the introduction of federal family violence orders, as an excuse for breaches of orders.

**Senator WATERS:** Thank you very much to the witnesses for your submissions and for appearing before us today. Can I just pick up on that last point. For the record, I agree with you that it would need to be done in a culturally appropriate manner, with all of the concerns about the over-policing of First Nations communities that already occurs. What's the solution? I know it's a tricky question. But is it simply a radical increase in training for the police and judicial systems? How do we address your concerns—that I share—but also deliver the protection that's needed?

**Ms Baltins:** One of the options available may be an expansion of the Indigenous list in the Federal Circuit Court. That's currently in New South Wales, only based out of the Sydney registry. That provides a culturally safe and appropriate pathway through the court for Aboriginal and Torres Strait Islander litigants and their extended families. The benefit of the Indigenous list is that it not only provides a specialist pathway but it also brings in the wraparound services that make sure that victims of violence are provided with the wraparound holistic, legal and social supports available through, for example, the Family Advocacy and Support Service, duty lawyers, and specialist Aboriginal and Torres Strait Islander support services.

**Senator WATERS:** Just to clarify, that list would be in usage if there was a breach of the federal family violence order, and the enforcement of that happens, my understanding is, through the state system. You're saying that the enforcement of that through the state system would be managed best through rolling it into the Indigenous list?

**Ms Baltins:** One of the advantages would also be that the order could in the first instance be made in the Indigenous list. A specialist judge would be able to look at the family in the Indigenous list, and be able to look at their family law, parenting, property or other matters, but also their federal family violence order would be streamlined through that pathway.

**Senator WATERS:** Can I ask which court the current Indigenous list exists in?

**Ms Baltins:** In Sydney. That is a list managed by Judge Boyle out of the Sydney registry.

**Senator WATERS:** Of which court?

**Ms Baltins:** The Federal Circuit Court.

**Senator WATERS:** So there's an existing Indigenous list in the Federal Circuit Court? That's the bit that I didn't realise.

**Ms Baltins:** Yes

**Senator WATERS:** I understand now. That makes perfect sense. I'll go back to the concerns that Mr Kent raised about the ICLs. The Law Council had some similar concerns, but we didn't get the time to discuss them today. Your concern was about their ability to remain independent if they were the applicant for the federal family violence order, if I've followed you there. Do you have any ideas how to fix that? Are you suggesting that that ability for the ICL to make the application be removed? And a counterpart question is: if an ICL suspects that a child is subject to family violence, what are the existing options to bring that to the court's attention before such time as this federal family violence order may be legislated?

**Mr Kent:** I'll answer the last part of the question first. When an ICL is appointed in a Federal Circuit Court or a Family Court matter, there is normally evidence before the court as to the family violence that has been alleged or is alleged to have been occurring. In South Australia, we have the benefit of having both an embedded Department for Child Protection worker and a South Australian police officer at the court who provide information to the court as to the Department for Child Protection's concerns and SAPOL concerns. We are lucky in that respect, and many other registries don't have that assistance. So, when an ICL is appointed, information is normally given to the ICL from both DCP and SAPOL, and we are then able to address those concerns and assist the court in whatever way we can. It's unusual for us to not be aware of the allegations at the time of the appointment of the ICL. The ICL isn't normally appointed unless there are special reasons for an ICL to be appointed—family violence and those issues been one of them. I hope that answers the question.

**Senator WATERS:** Thank you. It answers the second part. But the first part is: how do you suggest managing that potential conflict of interest of the ICL when they are an applicant for a federal court order?

**Mr Kent:** I just cannot see how the parties could consider an independent children's lawyer to be independent if they were bringing the application against one of the parties for the intervention order, so I don't think it is appropriate for the independent children's lawyer to be bringing such an application.

**Senator WATERS:** I have one final question, because I suspect I'm nearing the end of my 10-minute chunk. There have been concerns raised by some other submitters—and I'm interested to know if you share these concerns—that it will be more difficult for rural and regional folk to seek federal family violence orders because there are fewer Federal Circuit Court registries in the regions. So there's a concern that there might be an urban-rural split, with the urban folk being able to seek federal orders and the rural folk essentially feeling like they don't really have that option in practice. Do you share those concerns and how do we manage that?

**Mr Kent:** Absolutely we share those concerns. In South Australia, we only have one Federal Circuit Court and Family Court in Adelaide, whereas there are numerous state magistrates courts throughout the state that are able to provide the services of intervention orders. So, unless the Federal Circuit Court were on circuit more often and in various areas, I just can't see how the Federal Circuit Court can cope with the rural aspect of these issues. The state courts are far better positioned to do that.

**Senator WATERS:** Legal Aid New South Wales, do you have similar concerns in that regard?

**CHAIR:** Senator Waters, have you concluded your questioning?

**Senator WATERS:** I have more questions, but I figured I had run out of time.

**CHAIR:** You are getting very close to time. Thank you so much, Senator Waters. We'll now go to Senator McAllister.

**Senator McALLISTER:** Thanks very much. Thank you to all the organisations for preparing submissions. When were you first consulted about this bill? When did you first have an opportunity to provide feedback on this new regime? I'll ask each of the organisations to answer separately.

**Ms Canny:** I'm not in a position to answer that. I would have to check for you when the consultation was referred to us.

**Senator McALLISTER:** The bill was introduced in parliament in March. Perhaps I can just indicate that I'm really trying to understand whether anyone was consulted on this bill before it was put into the parliament. It was put into the parliament on 24 March.

**Ms Colquhoun:** We will also need to take that question on notice. I'm not sure exactly when we were consulted.

**Senator McALLISTER:** Thank you. Your submissions raise a lot of questions which go to uncertainty around the provisions of the bill. We've discussed some of those uncertainties: the role of the children's lawyer; the approach for securing interim arrangements or, at least, rapid protection for people in need of support; and uncertainties around the roles and responsibilities of state jurisdictions in enforcing these orders, if they come into being. In your experience, is it usual for legislation to have this much operational uncertainty about how the regime will actually work?

**Ms Colquhoun:** I'm finding that question quite difficult to respond to. In family law, there's always a lot of uncertainty about how legislation will play out on the front line. I'll ask my colleagues at the Legal Services Commission of South Australia whether they have any further thoughts about that question.

**Ms Canny:** I'm very much the same as Alex. It is a difficult question to answer. We obviously want to get the legislation right. This is really complex, because we're trying to benefit the individuals and benefit the community, but also work with our fairly complex laws from state and Commonwealth. This is one area where Commonwealth and state laws collide, almost. So there is a lot of detail there that needs to be sorted through. From the perspective of legal aid, though, we do work with the Commonwealth Attorney-General's Department on a constant basis. We meet with them regularly. We work through issues, probably from the very early thought bubble stage right through to when draft legislation is coming.

**Senator McALLISTER:** You've indicated in your submissions a range of areas where you consider that the bill needs to be amended. If the bill proceeds without these sources of uncertainty being resolved, is there a risk that it will make the situation less safe for victims of domestic violence rather than more safe?

**Ms Canny:** That's an interesting question, because obviously the aim is to have more availability and to make it safer. So we would really have to use hindsight for that to see what the benefits have in fact been.

**Senator McALLISTER:** Unfortunately for senators, we won't have the benefit of hindsight. We need to make a set of recommendations back to the government about the bill that they've presented. I'm interested in understanding whether you think the bill should proceed unamended or whether it requires amendment to actually secure the benefits that it is seeking to obtain.

**Ms Canny:** My view is that it needs amendment.

**Senator McALLISTER:** Thank you.

**Ms Canny:** If this is an appropriate point, I was going to speak to the implications for legal aid commissions around Australia. We're very seriously concerned about this legislation because of the impact on our ability to fund legal aid matters. As I think a number of submissions have demonstrated, at the moment in our state-side intervention orders in South Australia, legal aid does not fund applications, because for South Australia it's a police process and individuals generally—generally—don't have legal representation, including legal aid representation. So this new way of obtaining an intervention order through the family courts will put quite a substantial demand on our budgets, because there will be more events on a file which will cost us more, there could well be more applicants than we're seeing at the moment, and, of course, it adds a level of complexity that we'll be required to fund. We often fund both sides in a family law dispute, both the father and the mother, and sometimes, of course, there are other parties, like the grandparents. So we are very concerned about that impact on our budgets, and we haven't been consulted as to what that impact might look like.

**Senator McALLISTER:** What would be the consequences for women's safety if those budgetary issues aren't addressed?

**Ms Canny:** We will have to ration our funding, in the sense that we'll have to decide which matters have the highest priority, because if you have limited funds then you've got to make those difficult decisions. Under our funding agreements, children always have the highest priority, so it may be that we will prioritise independent children's lawyers' appointments above party-party appointments. They're the sorts of decisions that each of the legal aid commissions will have to make in their own state or territory, and then that would impact on the number of self-represented parties before the courts.

**Senator McALLISTER:** Thank you. I have a final question, and this is specifically to Legal Aid NSW. In your submission, on page 6, you say:

In some cases, police have alleged that a report of domestic and family violence is being made to obtain an advantage in the Family Court proceedings.

For clarity, do you agree that that is the basis for applications being made?

**Ms Baltins:** That is one of the concerns that we raised as a basis for a lack of police responsiveness in some cases. However, I also want to acknowledge that in the New South Wales the vast majority of ADVOs at a state level are taken out by the police. What research shows us is that people do not typically make up allegations of violence for their family law matters, but it is of concern that clients have come to us, in terms of reasons why the police do not want to get involved in their matters when they are raising allegations of domestic and family violence when family law matters are on foot.

**Senator McALLISTER:** It was on that basis that the coroner made a series of recommendations in relation to the death of the Edwards children, wasn't it?

**Ms Baltins:** Yes.

**Senator McALLISTER:** Thank you. I appreciate your pointing to that. Thank you very much, Chair. That's all the questions I have for these witnesses. Thank you so much.

**CHAIR:** Thank you very much, Senator McAllister. I am now on videoconference. I resolved a few technical issues at my end. I understand Senator Waters has one more question before we dismiss these witnesses.

**Senator WATERS:** Thank you, Chair. It was about the impact on legal aid, which Senator McAllister just asked about. But I would appreciate an answer to the final question that we didn't get the chance to get any information on. You were concerned about the impact of the urban and regional divide, given the lack of federal court facilities in regional areas.

**Ms Colquhoun:** In relation to that question, I was in agreement with my South Australian colleagues that we are concerned about the access that our clients in regional and rural areas would have to these protections. We would also like to make the comment that the need for the state system to continue to operate in its current form is important to ensure that those families don't fall through the cracks.

**CHAIR:** Senator Waters, have you concluded your questions?

**Senator WATERS:** I have. Thank you very much, Chair.

**CHAIR:** Alright. I'd like to thank witnesses for appearing—

**Senator HUGHES:** Sorry, could I just jump in with one question.

**CHAIR:** You have the call.

**Senator HUGHES:** Thank you, Chair. What steps will Legal Aid NSW be taking to ensure that senior practitioners remain engaged with legal aid child representation panels?

**Ms Colquhoun:** I just want to clarify the question: are you asking about what Legal Aid NSW is doing to ensure that senior lawyers on our panels continue to do independent children's lawyer work?

**Senator HUGHES:** Yes.

**Ms Colquhoun:** In response to that question, we're doing a number of things. We offer continual training through our conferences and through our webinars. We're conscious that it's really challenging work. Limited resources also mean that we haven't been able to increase the fee scales for our independent children's lawyers on our private panels for a number of years. We are really aware that they're under a lot of pressure and that it's challenging and sometimes thankless work, but at the same time it's absolutely critical work in that we are performing such an important role for vulnerable children. I think this is a little off topic in terms of the family violence orders, but I do want to stress that we are doing everything we can to ensure the quality of ICL representation to ensure that we are retaining our most experienced private lawyers on our ICL panel.

**Senator HUGHES:** Thank you.

**CHAIR:** I again want to thank the Legal Services Commission of South Australia and Legal Aid NSW for your time, for your considerable efforts in making submissions and for your evidence today. The committee will now break for lunch.

**Proceedings suspended from 13:25 to 13:55**



**GNECH, Mr Calvin, Principal Solicitor, Legal Services, Queensland Police Union of Employees [by video link]**

**LEAVERS, Mr Ian, General President and Chief Executive Officer, Queensland Police Union of Employees [by video link]**

**WEBER, Mr Scott, Chief Executive Officer, Police Federation of Australia [by video link]**

**CHAIR:** It's my pleasure to welcome representatives of the Queensland Police Union of Employees and the Police Federation of Australia. Thank you so much for taking time to give evidence today. Information about parliamentary privilege has been provided to you and is available from the secretariat. The committee has received your submissions as submissions 5 and 22 respectively. If you wish to make an opening statement, at the committee's request it would be appreciated if you could provide that to the secretariat in writing in advance of today's hearing—well, the hearing is now well underway, so if you could provide that as soon as possible! Do you have any corrections to your submissions? Do you have anything to add to the capacity in which you appear?

**Mr Leavers:** Calvin Gnech is from Gnech and Associates. We instruct him on behalf of the Queensland Police Union of Employees.

**Mr Weber:** I have no opening statement and do not want to change our submission.

**CHAIR:** Thank you very much. We very much appreciate your submissions and your time in giving evidence today. I will kick off briefly and ask each of you to provide a summary of your response to the bill and any concerns or aspirations which you might have. I will direct my question first to the Queensland Police Union of Employees.

**Mr Leavers:** Thank you very much, Chair. Domestic violence is a national issue and the response therefore should be a united federal response ensuring consistency across all states. As we know, family law proceedings and domestic violence are often interwoven. Individual state legislation causes the possible perpetrators to hide behind state borders. Unfortunately, more often than not than we would like to admit, DV orders can be misused to support family law court settings. I can say this and qualify: when I was in the Juvenile Aid Bureau, which is now the Child Protection and Investigation Unit, I saw this from time to time, which was very concerning.

It could be an abuse of process, but it is a waste of public resources having two hearings before two different judicial officers in two different jurisdictions. These judicial officers are asked to deal with the matters in a silo, often without all the relevant and accurate information. Further, I'd suggest that because of our close relationship and immigration system with New Zealand there must be an information-sharing database to ensure that Australian and New Zealand authorities have the appropriate information so we can deal with things at hand. I have written to the home affairs minister in relation to this. I think there is need for a national database. I will say that neither state police nor state courts have any visibility over family law court proceedings, and this can be a hindrance. Neither have access to orders or court dates and have to regularly rely upon information being provided by the parties, which could be inaccurate and self-serving at times, so there is a need for a national approach because this is a national issue.

**CHAIR:** Thank you very much. Mr Webber, could I ask for your response to the bill and any concerns or suggested changes to the bill you might be seeking.

**Mr Weber:** We're very supportive of the bill, too, and the intent of the bill. Anything that protects families across Australia is well supported by police across the country. There has been consultation with the states and territories in regard to the violence orders. The National Personal Protection Injunction Working Group, which has state and territory police agencies as members, had been involved in it. One of our major concerns is obviously police training and resourcing. Who's going to serve the orders? State versus federal jurisdictions? There have been conversations about it being served in person. We prefer it to be served electronically, especially in a COVID environment. I think utilising technology would be a better path. I know the sheriffs' departments and alike across the country have been discussed as well.

Ian touched upon this, too: a national police reference system. The courts utilise that. Again, harmonisation in regard to information and legislation is critically important. That's why we welcome this bill. It's extremely important that we do protect our families, but make sure that it hits the ground running. When the legislation is discussed, perhaps a trial site or a trial state could be done to make sure you implement it and that the duplication Ian was talking about doesn't occur. Also we can work out and tease out those problems with communication and make sure the correct information is given. You'll see from our recommendation that any training, additional resourcing or technology upgrade requirement for the states or territory police as a result of the carriage of this bill should be federally funded. We would presume that would occur, making sure that we're all on the same song

sheet, then the bill can be implemented and then we can protect our families. The last thing we want is lack of communication or lack of clarity in regard to the bill.

**CHAIR:** Mr Webber, a lot of work has been done to nationalise state and territory based family violence orders, whether they are on an interim or final basis; whether they're intervention orders or apprehended violence orders. There has been a lot of work done in relation to the important point you make about harmonisation. How would you propose that could be further improved?

**Mr Weber:** Firstly, the national database is critically important. We've pushed that up with intelligence and we've pushed that up with procurement. To again use COVID as an example: PPE was a of critical importance for not only health workers but frontline police officers, who were the face of social distancing. We wanted that as a national approach, and that did occur. With this, when we're talking about this legislation, what we want to make sure of is that police officers, whether they be in Brisbane, out at Mount Isa, at Alice Springs or in Perth, have access to the same information, that there isn't that duplication with state intervention orders, AVOs, protection orders or family violence orders in the federal counterparts.

Again, as Ian highlighted, make sure that it can't be used as a punitive tool or a tool in family law court matters either, because that information is already available there. The other thing with the harmonisation is that it means police officers, if they have to be the people who serve these orders, have up-to-date information and can do a risk assessment to make sure, when they do serve those orders, that the other parties involved are aware of it, that it's updated straightaway in the system and, on top of that, that the police are safe when they are serving it to some of these offenders who are quite violent.

**CHAIR:** Thank you very much. I appreciate your comments and evidence.

**Senator WATERS:** Thanks for your submissions and for joining us today. Initially, around enforcement: some of the submitters have raised potential concerns about vision when there's a state DV as well as a federal family violence order. Do you envisage any enforcement problems arising due to any potential conflicts between state and federal family violence orders?

**Mr Weber:** Again, with the legislation, there has to be clarification of the procedures and processes. Police have quite often used both forms of legislation, and we use different acts all the time. Police officers across the country can use any act and any law enforcement tool, whether it be EPA, rangers or parking patrol officers. Police officers can encompass all those powers, including customs as well. So we can use federal legislation. The key is that sometimes we're not skilled or trained, or we don't have the resources to actually be aware of the full capabilities of that legislation or how to implement it. A primary example is illicit tobacco. Again, we all know there's illicit tobacco in the community, but state jurisdictions don't utilise that legislation because they're not the subject matter experts. So, again, it comes back to our recommendation, and what we've been saying across the country is that, if state police officers have to go out and actually execute and serve these notices, we want appropriate training and resourcing to do it so that we do it correctly the first time and there's not that breakdown in communication. There are always teething problems, and that's why I'd suggest maybe a couple of trial sites first or a trial state. But, in saying that, police officers are very good at dealing with difficult situations. We do it every single day, and we'll make the system work.

**Mr Gnech:** That's where the importance of visibility between the two jurisdictions comes in. If there are two different orders being made, it's really important that those orders are consistent and not in conflict with each other, because issues will arise with enforcement if they are inconsistent with each other. That's why it's vitally important that, for instance, the second judicial officer who's making the order, when one's already in place, should have timely access to all of the information from that other jurisdiction. That's a very important issue in response to the question that you asked.

**Senator WATERS:** That's precisely the situation that I was seeking to get to. What happens if they are inconsistent? How do you know which one should take precedence? Mr Gnech, obviously you'd seek to avoid that situation by having that decent information flow, such that the first order was known and taken into account when making the second order at the different jurisdiction?

**Mr Gnech:** One hundred per cent. As a matter of law, the federal order would take precedence, but, from a practical sense, we're dealing with people from numerous different socioeconomic backgrounds, and they're given these orders that are inconsistent with each other. That just opens up Pandora's box in regard to issues before the court when enforcement action's trying to be taken. The first port of call—and there are a lot of logistical issues around this—is to have one court deal with both issues. But, as we understand at the moment, family law proceedings are before the federal court, while domestic violence issues are before the individual state's courts. In a perfect world, if we could somehow one day arrive at a position where one judicial officer is considering all of

those issues, rather than separately in a silo, that would be the best-case scenario, but we're not anywhere near that position as yet. So the second position is that visibility around access to the court orders that each court has made—what those orders say and whether or not those orders have been served—is vital when the second court is determining what orders to make.

**Senator WATERS:** Pardon my ignorance, but is that the case at the moment? Is there that information flow? I know there have been some recent changes, but I'm not across whether or not they extend to family courts being notified of the content of database DVOs.

**Mr Gnech:** My understanding at the moment is, at least here in Queensland, state courts do not have any visibility whatsoever on court systems or otherwise, in regard to court dates, court orders from the Family Court and the like. It's regularly that the judicial officers in the state courts are simply asking the parties what the status is of those proceedings.

**Mr Leavers:** We can often rely on the people involved to give this information because police do not have access to it. A problem I foresee is: when we have vulnerable people, if there are two different orders in place it may be hard for educated people to comprehend and understand that, particularly in Queensland where we have a large Indigenous population. I go north, and they cross between the Northern Territory and Queensland, and we go to the Torres Strait, dealing with vulnerable people. If they're confused, we're setting them up for failure instead of assisting them.

**Mr Weber:** That's why we reference the National Police Reference System. All courts need to have access to that. Some of the courts do. Some jurisdictions don't. That's why communication is key. I think that's been highlighted by Queensland in regard to that perfect world; we talked about harmonisation. At the present moment there are two different jurisdictions dealing with protection of families. The face-to-face and the day-to-day is dealt with by police officers in the state jurisdictions; they're the ones on the ground attending the calls, going to people's houses and those locations, and they can update that information. As Queensland highlighted, a lot of that information is handed to our officers; when we are going to an apprehended violence order hearing or a family law court hearing, and police are actually there, we get that information handed from the defendant or the people who are the victims.

**Senator WATERS:** Can I move now to the training and additional resourcing requirements that I imagine will be required if this is to be successful. I think it was your submission, Mr Weber, that said you also envisaged there might need to be additional upgrades to technologies. Can you give us a ballpark estimation of how much more resourcing you think would be required to have that tech upgrade, to do that specific training, and can you estimate how much additional resourcing would be required overall to properly roll this out?

**Mr Weber:** That's extremely difficult. With apprehended violence orders or orders to protect from the states, we're looking at, across the country, well over 100,000 every single year. As we discussed before, from some of the other submissions and our research as well, we're looking at family violence orders in the range of 400. Once this legislation is in play, one would say there'd be a lot more available and people would be a lot more aware of it, and their legal counsels would advise them to go down this path. It could be quite exponential, which would be a huge issue.

At the present moment we can issue orders straightaway. Some states can issue them electronically. To my understanding—perhaps the chair can enlighten me—electronic service was off the table. But I would suggest, especially in a COVID world, and considering what's currently occurring across the country, that those alternatives need to be looked at. In regard to funding or how much extra money, I couldn't even hazard a guess. In saying that, I push for a trial in a limited jurisdiction or a limited area so we can get some tangible data to see where this progresses.

**Senator WATERS:** Just a follow-up question: you mentioned, and indeed the department mentioned, there'd been some consultation and collaboration in drafting this proposed bill. It mentions the police were involved in that, so presumably your two organisations were involved somewhat; correct me if I'm wrong. In the course of that consultation, if you were involved, was there any commitment made by the federal government to provide additional funding to meet those training needs and to service those technology improvements that would be needed to roll these FVOs out?

**Mr Weber:** We weren't involved in those initial consultation processes with the National Personal Protection Injunction Working Group. We were made aware of it after, when the legislation was tabled—I think it was on 24 March; that's when we first became aware of it—and we have spoken to our jurisdictions. The police associations and unions and the Police Federation of Australia weren't involved in those consultations, but we spoke to our members afterwards.

**Senator WATERS:** My mistake. Are either of your organisations on the National Personal Protection Injunction Working Group?

**Mr Weber:** No. To my knowledge, none of the unions or associations are.

**Senator WATERS:** Thank you; that makes sense. Just one final question: what sort of lead time would you need to do that proper training and to have that technology upgrade to properly implement the family violence orders, if they were to pass the parliament? What sort of time frame is reasonable to allow for training like that?

**Mr Leavers:** I would suggest that in Queensland we'd need a minimum of six months. My reasoning is, with the current training required of police, it is quite complex, and, Queensland being a very decentralised state—as are probably the NT and Western Australia—it is very problematic for us and very time consuming to get training into remote areas. We see it as absolutely imperative.

As you'd be aware, recently in Queensland, with some domestic violence issues which have been highlighted, experienced police have been calling for increased training in relation to this, just at the state level. To bring in a new system at the Commonwealth level is really imperative. It's ironic that police are calling for better quality training and better funding, because we're at the front line where, sadly, by the time police are called it's too late. I think it would be a minimum of six months. It certainly needs to be funded. Wherever you have a decentralised state, the cost will increase incredibly. And we need this training to be ongoing, because it is a moving beast. It changes regularly. It's not just training for 2021; we need to have ongoing training, because this is a really important issue right across the country.

**Senator WATERS:** Just one quick follow-up question: you've identified the need for more training around existing domestic violence issues, let alone a new family violence order. Has the Commonwealth made any commitments to you about funding that additional training? Where do you see the source of funding for that training coming from? Should it be the feds or the state? Has anyone said they will give you that additional resourcing?

**Mr Leavers:** I can say from a Queensland point of view that what I have asked for from the home affairs minister is a national database where we can share all this information, so that we have consistency. I see that as being vitally important. I think for consistency it needs Commonwealth input, because domestic violence doesn't stop at state borders; it crosses the entire country. I think it is imperative to do that at a Commonwealth level. We hear all levels of government say domestic and family violence is a national scourge upon us, so I think the Commonwealth has a really important role to play. If it is left to the states, it will not have the consistency which is vitally needed.

**Mr Weber:** This is probably a good catalyst for the Commonwealth to get more involved in the funding and put that seeding fund across the jurisdictions in regard to dealing with domestic violence. As Ian's just highlighted, federal funding would be well welcomed. Policing is a state responsibility, but domestic violence is across the entire country. I think at the present moment, with the current COVID lockdown issues, there is a lot more awareness of family and domestic violence. A federal influx of resources and funds would be well welcomed by all the states. When we put that in play, we protect families a lot better. This legislation could be a real catalyst to ask for that extra funding and extra training as well.

**Senator WATERS:** From that, I infer that no such commitment has yet been made but you would welcome it?

**Mr Weber:** That is correct.

**Mr Leavers:** We'd welcome it, absolutely. I think it's really important. And I think it's really important, with Australia being so multicultural, that it's not a one-size-fits-all training. In my jurisdiction, if I go to the Torres Strait compared to the Gulf it is completely different to when I go to Kununurra, Logan, Goodna or Caboolture. I think it needs to be tailored individually for those who are vulnerable people who we often come into contact with.

**Senator WATERS:** Thank you.

**CHAIR:** Senator Waters, there are a range of issues which you have raised that I'm just flagging will be addressed by the Attorney-General's Department. I imagine we'll be asking those questions later in the hearing today, but I just wanted to put on the record that there are a range of measures in the 2020-21 budget to support the implementation of these amendments, including funding for the automated system, which would provision federal family violence orders to the National Police Reference System. That funding is in relation to the Australian Criminal Intelligence Commission. There's also some funding which has been allocated for online training modules for state and territory police. I'm obviously just flagging at this point that we will take further evidence in relation to those matters, including the service of orders where there's also been some provisions

made in relation to electronic service and the like. But, again, I'm just flagging that we will address those matters in more detail once we have both the Attorney-General's Department and the Department of Social Services before us.

**Senator McALLISTER:** Before I begin, I wish to let the committee know that I have known Mr Weber for about 40 years. We grew up in the same neighbourhood and went to the same school, so, while it is not a conflict in the terms in which the standing orders define a conflict of interest, to take a cautious approach, I would declare it.

**CHAIR:** Mr Weber, was Senator McAllister very naughty when she was at school?

**Mr Weber:** No. She was the dux of the school. She was brilliant and always well-behaved, kept me in line—probably the reason I'm a police officer now!

**CHAIR:** You have the call, Senator McAllister. Thank you very much for that insight.

**Senator McALLISTER:** Mr Weber, a question for you in the first instance. We've just been talking about the significance of having a national database that has that information on it. The submission from the department indicates that, in fact, funding has been provided to the Australian Federal Police to develop the automated system. I'm conscious that you are not the department; you represent serving police. Has the AFP been in touch or had any consultation with your organisation about this tool that they are developing?

**Mr Weber:** No, not at the present moment. The National Police Reference System, and the intelligence space system, and through the ACI—that's been on our agenda for the last decade. I think every single month and every single day we find a new reason to communicate better and exchange ideas and put that database up. But I think this is where this committee can actually really cut through some of the red tape and make sure that not only is the funding there but also that it actually gets done and that communication goes to the police officers out on the street. It's all well and good actually formulating something or having a database, but it has to be readily available to police officers out on the street who are serving these family violence orders or serving an apprehended violence order or a domestic violence order. So consultation with the AFP is still ongoing, and the National Police Reference System is available in some of the states, but, again, as highlighted by my Queensland counterparts, I think it needs to be updated and a lot more readily available.

**CHAIR:** Just to make things clear, the National Police Reference System, which is supporting the National Domestic Violence Order Scheme, was envisaged as a short-term, interim measure, and there will be developed a much more comprehensive information-sharing platform as part of a national criminal intelligence system, just to put that on the record and make that crystal clear.

**Senator McALLISTER:** Mr Weber, other witnesses, principally the Law Council, have recommended that the bill only be implemented once there is a national electronic database for family violence orders in effective operation with appropriate funding. Their contention is that it's really not a workable bill until such a system is in place. Do you agree with that?

**Mr Weber:** Across the jurisdictions, they welcome this bill and the progression of it. It's probably just the implementation and how it would be exercised. Those concerns by the Law Council are obviously quite just, but, in saying that, I think that's where we come back to some of the conversations we had earlier about having a trial site and progressing this forward. It's one of these things that do need to be done to make sure that families are protected and there is that alternative there. As our Queensland counterparts highlighted, it would be critically important if there were one jurisdiction that would be the one-stop shop to deal with domestic and family violence situations and with all those custody issues and other family law court matters, but that's not going to happen in the near future. In the interim, I think this would be something that we could progress forward. Again, a trial site or a trial jurisdiction would be readily welcomed by police officers across the country.

**Senator McALLISTER:** Thank you. I have a question for Mr Leavers. In your submission, you wrote:

... in some instances where it would appear the first occasion on which an application for such order is made, is upon proceedings being commenced for family matters in the Federal jurisdiction. There seems to be a perception that having a State based domestic and family violence will benefit a party to federal litigation. The QPU is aware of a number of occasions where this practice has occurred, against its own members.

Could you just explain to the committee a little bit further what you mean by this? Who holds this perception?

**Mr Leavers:** It's actually a reality. I'm aware of information on things that have occurred, sadly. It's not just police officers who get involved in the system; it's the greater community where at times, sadly, the state based system is used to be of benefit when things are going before the family law court. As I said earlier, when I was in the Juvenile Aid Bureau, I was predominantly an investigator in relation to child harm and child abuse. Coming up to a family law court hearing, things would suddenly become apparent and domestic violence or other matters

suddenly arose. A common question from investigators was, 'Is there any matter currently before the family law court?' It happened from time to time. We see that as a real concern when you have two different jurisdictions dealing with it, because all of the information needs to be made available. That's why we're talking about that for consistency and ensuring that all the information is available to the judicial officers when matters are before the courts.

**Mr Gnech:** Can I just add to that? I've been in the criminal justice system around domestic violence for the past two decades. What Mr Leavers is indicating specifically is that, if there is a domestic violence order or domestic violence proceedings have commenced, where there are allegations that domestic violence has occurred in front of or to children, that aspect is then sworn in an affidavit and put before the Family Court when custody and access orders are being determined. The view is that advice is given that that's an advantage in family law court proceedings in regard to access to the children. That's one specific example of where there's a view that there's a strategic advantage in having domestic violence proceedings on foot when there are current family law proceedings as well.

**Senator McALLISTER:** Sorry, I'm going to need you to be a little bit more specific. Who holds this view?

**Mr Gnech:** I think the view there is that legal advice is given, whether by advocate agencies or by lawyers themselves, that there is an advantage, for applicants in family law court proceedings, in having a domestic violence application on foot at the same time.

**Senator McALLISTER:** Are you indicating that your organisation's view is that people are making false claims to obtain such an advantage?

**Mr Leavers:** Sadly, on occasions, yes, the systems are abused to further another matter before the courts. Sadly, it does happen, yes.

**Senator McALLISTER:** You indicated in your submission that you're aware of a number of occasions where this practice has occurred against its own members. What does that mean?

**Mr Gnech:** Moving away from the family law court space, in Queensland—and Mr Weber might have to talk more generally—if a domestic violence application is made against a serving police officer, they are immediately, without an order being made—just an application has been made—placed on restricted duties, their operational authority is taken away from them, they cannot have access to firearms and their career is put on hold. There are instances where the other party, knowing that that detriment occurs, makes those applications and it has to be fought out in the court over many months before a proper conclusion to the matter is reached.

**Senator McALLISTER:** Is this a widespread problem in your experience?

**Mr Gnech:** I have been doing work for the Queensland police union for over a decade. I don't want to overstate the problem, but I would deal with multiple instances per year that would fall into that category.

**Senator McALLISTER:** I'm interested in whether you have any survey or quantitative data about it. Other surveys suggest that there's very little evidence to suggest that people fabricate claims of violence. I'm interested if you have any alternative information that you could provide the committee. That is something you can take on notice. Finally, Mr Weber, you spoke a lot with Senator Waters about the need for training and funding for training. Do you have any observations to make about the consequences for women's safety if that funding is not delivered?

**Mr Weber:** What will occur is that we put families at risk and also put police at risk. We can't do a proper risk assessment if we don't have all the information. Also it's critically important that we serve the orders correctly. If they have to be in person, certain procedures have to be done. When we're serving such an important document that offers protections to families in a hostile and violent situation we want to make sure it's done to the letter of the law because, if we have to take action at a further stage, we want to make sure that there are no technicalities or points of law that could be raised against us. It's critically important that there's appropriate training and it's implemented over a period of time, where all police officers can be correctly informed how to execute the legislation and make sure it is appropriately served on the defendants, and then it is properly used across the country.

**Senator McALLISTER:** Those are all the questions I have. I thank the witnesses.

**Mr Leavers:** I think we should be using technology at each and every opportunity we can because, where there is a delay in serving any documentation, it puts the victim at real risk. Obviously we have to serve it upon both parties but where there are delays—and it can happen for various reasons—people become very vulnerable and we are not really protecting them as we should be.

**CHAIR:** Mr Leavers, thank you. I'm just looking at some advice. There is a service protocol for federal family violence orders that has been agreed with the states and territories. That will be prescribed in the regulations. Under the protocol, the court that made the order will have the discretion to select the most appropriate service method on a case-by-case basis, including electronic or postal service by the court, personal service by a prescribed state or territory agency, or personal service by a process server. These matters have been agreed by way of protocol. As I say, they will be prescribed in the regulations, and electronic service is obviously very much part of that protocol—just to put that on the record.

**Mr Leavers:** Thank you, Chair. That's great.

**CHAIR:** Senator McAllister, if you have no further questions, I don't believe any other senators have questions. On that basis, I want to thank you both very much—the Queensland Police Union of Employees and the Police Federation of Australia—for your evidence and your time.

**ANTONAS, Ms Georgette, Manager, Policy Unit, Centre for Excellence in Child and Family Welfare [by video link]**

**COCHRANE, Dr Susan, National Policy Manager, Relationships Australia**

**TEBBEY, Mr Nick, National Executive Officer, Relationships Australia**

**TSORBARIS, Ms Deborah, Chief Executive Officer, Centre for Excellence in Child and Family Welfare [by audio link]**

[14:35]

**CHAIR:** It is now my pleasure to welcome representatives of Relationships Australia and the Centre for Excellence in Child and Family Welfare. Thank you so much for your time and for giving evidence today. Information about parliamentary privilege has been provided to you and is available from the secretariat. The committee has received your submissions as submissions 4 and 10, respectively. If you wish to make an opening statement, at the committee's request please just distribute that statement to committee members so we can move straight to questions.

I'll now ask you to provide your comments on the bill generally and a summary of any concerns you have or changes you would like to see. Before I do so I just want to put on record—in the spirit of Senator McAllister putting on record her association—my previous, very positive work with Dr Cochrane, when Dr Cochrane was an adviser to former Attorney-General Brandis. We did a lot of work in this space, and it's wonderful to see Dr Cochrane now doing so much good work with Relationships Australia.

So firstly, Dr Cochrane and Mr Tebbey, could you provide your response to the bill and, in summary, any concerns you have.

**Dr Cochrane:** Thank you very much, Chair, and thank you for those kind words. Our primary concern, of course, is for safety for children and their families in the family law system, and we've provided a number of submissions over the last few years to support that. We applaud the intent of the bill, and we note that many of the other submitters also have applauded the aims of the bill, particularly in terms of reducing fragmentation and the burdens of fragmentation on families who are under considerable stress.

We think that the bill is a very positive attempt to reduce duplication of proceedings across jurisdictions and plug some holes that exist at the moment. We have very much welcomed the explicit statement by the government that family violence is not a private matter between individuals but a matter of public concern, and we are particularly pleased to see the continued expressed support for the paramount sea of the best interests of children and the prioritisation of the safety and welfare of children over additional considerations. We also welcome the provisions in the bill that will empower family law courts to proactively identify the most-suitable forms of relief and make own-motion orders where that's appropriate.

The particular concerns we have with the bill are the complexity of it. We recognise, we acknowledge, that the complexity of the bill is very, very much driven by the innate complexity of our federal system and also the complexity of the Family Law Act. So we have taken the opportunity in this submission, as with other submissions, to call for priority to be given to the simplification of part 7 in particular and of the act as a whole. We also, like other submitters, are concerned to ensure that all people who are professionally engaged in the implementation of the bill have appropriate resourcing, both in their training and education and in the resources available to them to give effect to the bill. Providing interpreters and translation service access and also accessible communications are particular examples of that.

We note that the family courts are courts with very heavy workloads. We are very well aware that a provision along these lines may well increase that workload, so we would support calls made by other submitters to ensure that the courts, police, prosecutors and legal assistance providers are all appropriately resourced. One of the worst things that could happen after implementation of this bill would be for its protections to become illusory because no-one who was charged with responsibilities under it had the resources to enable that to be given effect to. We share some concerns about misuse by perpetrators and about gaming of the system. For that reason, in this submission, as with other submissions, we have advocated for definitions in the Family Law Act to be strengthened around systems abuse and misuse of process.

Finally, we would note that there is a need, as Women's Legal Services and National Legal Aid have pointed out, for permanent information sharing mechanisms that can be accessed and used and relied on in real time. I might turn to Mr Tebbey to check that I have covered off everything.

**Mr Tebbey:** Yes. I have nothing further to add.



**Dr Cochrane:** Thank you very much.

**CHAIR:** Just picking up a couple of those issues, what is your observation in relation to the use of the family court system to impose systems abuse on the other party? In the case of the federal family violence orders, how could that be mitigated or alleviated?

**Dr Cochrane:** One of the things that we've been referring to in our submissions, including this submission, is that casting systems abuse simply around the Family Court doesn't take into account the fact that in the family law system there are a lot of opportunities that don't exist in the courtroom of the Family Court to perpetrate systems abuse. For example, in, I think, the Law Council's submission to one of the ALRC papers—I can't quite recall if it was in response to the issues or the discussion paper—the Law Council noted that, in the experience of their members, parties were using AAT processes and child support applications to enable collateral abuse and to perpetuate control and contact. So our concern with systems abuse in the Family Court is that the definitions in the act and the powers conferred on judges are not sufficiently broad in capturing the array of systems that might be called upon and manipulated by perpetrators in this regard. It's certainly not a concern just about what happens in the family law matter, whether that's a property or parenting or combined matter; it's how an array of other systems provide not only opportunities but incentives to perpetuate control and abuse.

**CHAIR:** Thank you. To the Centre for Excellence in Child and Family Welfare, could I ask for your general response to the bill and any major concerns that you have.

**Ms Tsorbaris:** There may be some repetition here, so I do apologise for that. The centre supports the aims and objectives of the federal family violence orders, as my colleague has just outlined, to make it easier and more cost-effective for protected persons by reducing the need for people already involved with the family law court system to then experience the added cost and administrative burden of commencing proceedings in the state courts. Many of you here would know that many of the families that we represent that are helped by community sector organisations across the country have coexisting challenges. Any streamlining of some of these really complex systems will be very, very welcome.

There are a few areas that probably mirror my colleague's comments earlier. Whilst we note that these changes do highlight the needs and the best interests of children, we continue to be concerned at state jurisdictions where children remain invisible in many of the systems that we're talking about. We would like to see children recognised as victims of family violence in their own right, with the right to protection, including conditions on orders that meet their own individual needs. It's important that family violence decision-makers have a really good understanding of the different forms of family violence and the impact on children. We're early days in this country in understanding the impact that family violence is having on children, but also we can sometimes then become blind to issues of abuse and neglect. So there are lots of things to have a line of sight on with the children that we're talking about.

In terms of information sharing, it's really crucial that the federal family violence orders scheme aligns and harmonises with some of the states and territories' work that responds to family violence. You may not be aware that in Victoria we have two schemes. We have an information-sharing scheme for children and one around family violence. Again, the harmonisation of some of these pieces of work is going to be critical. If we don't do it, we'll add more complexity.

My colleague talked about support. It is important that victims and survivors of family violence are not disadvantaged in seeking federal family violence orders. The Victorian courts have made some significant changes following the Victorian Royal Commission into Family Violence. We have dedicated family violence practitioners at every headquarter court to support victims-survivors and perpetrators during their court experience. And the Magistrates Court of Victoria have family violence duty lawyers onsite.

I'm not going to read the other long list of things that are available in the court system, but, in implementing this, we're going to really need to dig through, as I said, the harmonisation of the work that is happening but also the supports for families. I will reference the Family Violence Multi-Agency Risk Assessment and Management Framework in Victoria. Again, this is a bit of infrastructure to help practitioners, lawyers and experts appropriately assess what's happening for the women, the children and the males and the perpetrators in these scenarios. Again, we would hope that there could be a full appreciation of how that might continue to work in Victoria and maybe in other states.

My colleague talked about misidentification of perpetrators. This is a very live debate in Victoria at the moment. In talking to my colleague Georgette, we've yet to really identify the extent of this, but we are hearing from women that this is happening quite often. So this is a piece of work that the state needs to do and continue to think about in line with implementing this piece of legislation.

The thing I will add is that we are seeing a bit of an explosion in adolescent violence in the home in Victoria, and we need to be very careful that those young people don't end up getting caught up, as they do now, in any new arrangements. These are very young children, and we would say that calling them perpetrators at this point in their life would be very problematic, for us as advocates.

I might end there, otherwise I'll end up reading the whole submission.

**CHAIR:** Ms Antonas, do you have anything further to add to that?

**Ms Antonas:** I just think it's important to recognise the increasing complexity of families who engage in the family law system. We know that families who end up in hearings are often experiencing a range of challenges, so that needs to be recognised as part of this scheme. It's really important that decision-makers in the family law systems really think through, as my colleague, Deb, pointed out earlier, other challenges or factors that might be impacting children and young people, so abuse and neglect. It would be a really positive step to encourage decision-makers to seek assessments to really consider the impact of family violence and associated trauma on children and young people.

**Senator McALLISTER:** Thank you all for your submissions and your attendance today. You obviously bring deep expertise to the table, and I really appreciate it. Just quickly, your submission notes that fragmentation of information across government agencies and tiers of government has been a consistent theme raised by reports and inquiries into the family law system, and steps to share information are key to responding to those concerns. There have been ongoing delays in the creation of a national database around family violence and child protection orders. What are the consequences of the absence of such a database in the context of this scheme?

**Mr Tebbey:** In terms of the value that a database would have, we know and I think it's well accepted that any actions that government can take to break down the fragmentation and the disjointed nature of information should be applauded and would be valued. There is a risk when fragmentation pervades through systems that families—certainly some of the evidence of this committee has received—can slip through the cracks, so to speak. The need for consistent and streamlined processes for sharing of information has been proven. We're really optimistic about the opportunities for doing that. I think this bill addresses some of the core requirements for the courts to ensure that they interrogate databases and understand where information is available. We also think this bill would provide further impetus for moving towards another national standards database.

**Senator McALLISTER:** So a temporary solution in the first instance but the goal is this long-held aspiration for a more comprehensive database that facilitates information sharing.

**Mr Tebbey:** That would certainly be our goal, yes.

**Senator McALLISTER:** This question is also for Relationships Australia. Your submission notes that without proper resourcing, there is a substantial risk that the orders will not be enforced in practice, 'rendering illusory the protection they are intended to provide to vulnerable people. People are endangered by such illusions.' Can you elaborate on that idea?

**Dr Cochrane:** For example, there are the provisions in division 12A of part VII of the Family Law Act, which provide for less adversarial trial provisions to be used in parenting matters under part VII. They were used very well. They grew out of a pilot that I think was initiated, from memory, by Chief Justice Nicholson and were brought into being in 2012. But they have fallen into some disuse over the last few years, and it is generally believed by stakeholders that a lot of that disuse is attributable to the fact that judges are so hard-pressed with their workloads, which I don't think comes as any surprise to anyone who has an interest in this area. So we have seen that we've got a good suite of provisions in the act that, if implemented, would go a long way in addressing Relationships Australia's concerns about the effect of combative win/loss processes on the wellbeing of children.

Having had that salutary lesson of division 12A in front of us, we are certainly very mindful that, in the absence of appropriate resourcing, police will not be in a position to appropriately prioritise enforcement of the proposed orders. Prosecutors won't be in a position to give priority in their priority matrices to bringing these matters forward. Courts won't be in a position to hear the matters in a timely manner, and I note the concerns expressed by a number of submitters to this inquiry about the need to get early hearings where possible and also the need for early determinations of fact, which we've previously supported in our submissions to the ALRC. Those are the kinds of concerns that we have.

**Senator McALLISTER:** What are the consequences, or what are the risks to victim safety, if this occurs?

**Dr Cochrane:** Well, if you are feeling safe because you have an order, and then there is no-one in a position to enforce that order if the perpetrator is breaching, then the consequences, I think, could be very serious, in terms of the danger which a protected person faces. That will include the person in whose favour the order is taken, as well as children. I don't want to be gratuitous or overly dramatic in forecasting what may occur, but we have seen

in this country a series of tragic and terrible, terrible events, where people have lost their lives—children have lost their lives. If you don't resource these systems properly, then there is a risk that people would be relying on something that wasn't there when they needed it, to put it in its most basic terms.

**Senator McALLISTER:** I have a final question to each organisation, and this is a process question. Were you consulted about this legislation before it was introduced into the parliament?

**Mr Tebbey:** No. Relationships Australia was consulted following the introduction of the bill into parliament.

**Ms Antonas:** No, the centre wasn't consulted, but we are probably not a key stakeholder like Relationships Australia. We submitted following the request for submissions.

**Senator McALLISTER:** Thank you to both of your organisations for making your submissions and for appearing today. I very much appreciate it.

**Senator WATERS:** I will add my thanks for the time, effort and expertise that's gone into your submissions and your appearances today. Much of what I wish to cover has already been covered. In particular, Dr Cochrane, you've given us some powerful evidence pertaining to the need for police and judicial training. It's not the first time we've heard such suggestions, so hopefully that will be heard widely. There are just a few brief questions from me. The Relationships Australia submission talks about the need to better involve children in decision-making and the family law system. Do you think this bill provides those opportunities, or do you think it provides hurdles to achieving that?

**Dr Cochrane:** Thank you very much, Senator. In our submission, we note that the bill creates a presumption that the effect of the orders won't be explained to children or young people who are affected. It's one of our suggestions that the bill could be refined to better comply with article 12 of the Convention on the Rights of the Child by providing children both with opportunities to participate in decision-making on matters that affect them and with explanations of what's gone before. We've noted the research from AIFS, reported as Carson et al. 2018, which notes that, while children don't want to be given the say or have the burden of decision-making put on them, they do want to be involved and to have their voices heard, particularly when it comes to matters that affect their safety, and they do want to be given explanations of what's going on, time frames and so forth. The ALRC noted that empirical research has demonstrated that children are harmed by uncertainty and by information vacuums, and we would support that. So we respectfully encourage government to amend the bill in a way that would make explanations to children, the participation of children and the inclusion of their voices a presumption, rather than have the opposite occurring.

**Senator WATERS:** Thank you. We had some earlier discussion with a few previous submitters that highlighted their concern with having an independent children's lawyer being able to apply for one of these new family violence orders, the implication being that the person would no longer be seen as independent if they had done so. Do you have a view on that?

**Mr Tebbey:** I think one view that occurs to me is about the role of the independent children's lawyer as a representative of the children. I absolutely take on board the comments of our colleagues from the Centre for Excellence in Child and Family Welfare that we need to change the discourse around family violence to include recognising children as victims in their own right. I think it is entirely appropriate for an independent children's lawyer to have a role to play in applying for FFVOs on behalf of the children who, yes, can be and often are victims in their own right.

**Dr Cochrane:** I might just add to that. In our other submissions to the ALRC, to the parliamentary joint committee and to the House of Representatives committee inquiry into sexual, family, and domestic violence, we have talked about how ICLs, who do extraordinary work, are terribly overburdened. They are required so often to be many things to many people. An evaluation of ICLs by AIFS in 2012 showed that the people who most appreciated ICLs were judges, because sometimes the ICL was the only lawyer in the room and the judge could turn to the ICL and rely on them to get evidence into court, get it filed and make sure that procedural things were happening. I wonder—and we have suggested this in other submissions—whether the role of the ICL does need some attention at a conceptual level, as well as a resourcing level, in terms of what responsibilities and expectations are placed on them and their role in relation to representing the best interests of the child.

**Senator WATERS:** Thank you very much. I will leave it there for questions.

**CHAIR:** That brings to a conclusion the evidence given by Relationships Australia and the Centre for Excellence in Child and Family Welfare. Thank you for your time today and for the considerable work in the submissions that you have made. It is very much appreciated.

**Proceedings suspended from 15:04 to 15:21**

**MATTHEWS, Ms Helen, Director, Legal and Policy, Women's Legal Service Victoria, Women's Legal Service Australia [by video link]**

**CHAIR:** It's my pleasure to welcome Women's Legal Services Australia, who will give evidence next. Thank you so much for taking the time to make a submission and give evidence. Information about parliamentary privilege has been provided to you and is available from the secretariat. The committee has received your submission. If you wish to make an opening statement, could you please distribute it to the secretariat and we will place it in the *Hansard* transcript. We will go straight to questions. I give the call to Senator McAllister.

**Senator McALLISTER:** Thank you for appearing before us. I note that your submission raises a number of detailed concerns about the bill and I appreciate you documenting those. I don't wish to go through them one by one. At the high level, what are the implications of these observations? Would this bill, as it's currently drafted, deliver safer outcomes for victims of domestic violence and their kids?

**Ms Matthews:** That is one of our concerns; there are some gaps in the legislation which might mean that that is not the case. It is expressed in our submission that we recognise that we need to have a whole suite of options in the family law system which are supporting safety. Certainly we have some of those changes happening at the moment and some more to come. We certainly agree that the family law system has an important role to play in responding to family violence, but what we are really conscious of is that family violence orders and other protective orders are really not the be all and end all of this; we have to have that parallel with other orders which are looking very closely at determining the impacts of family violence in family law matters.

More specifically, the gaps that we are concerned about with the legislation are in relation to protections that need to be in place so that we do not see systems abuse happening here. That is something that unfortunately we do see occurring in the family law system and also in the protective orders systems across the various states. Misidentification is where victims of family violence are claimed to be perpetrators of family violence. Sometimes the availability of a court process can encourage those actual perpetrators of family violence to try to use that system against their victims.

We are also concerned about the issue of the service of the orders once made. We acknowledge that the family law system is a private law system, but in looking at this and trying to improve the stability of orders with respect to safety we're adding risk by not actually setting something which ensures that the victim is not responsible for the service of documents on the other party. In that way, I'm not just talking about the victim not physically walking up to the door and knocking on the door and handing them over but rather, once again, that she is responsible for the protective measures that need to be in place to protect her, rather than that responsibility being removed from her at the time of her greatest risk. They are two of the concerns that we see are gaps in the legislation that we would like to see addressed.

**Senator McALLISTER:** For clarity, submitters to this committee have made suggestions of which some are about legislative amendment and others are about resourcing and operationalising the bill. In this instance, you are talking about amendments that are required to remove the risk of adverse consequences.

**Ms Matthews:** Yes. We see that that has not been addressed in the legislation. Certainly there are resourcing issues—I haven't gone into them, but our submission does talk to some of them. One is that there is in fact a cost involved with the service, generally when people are arranging a service to be done. That's an additional cost that would need to be borne by the victim. The legislation just says: we'll look after service down the track; we'll look at what that's going to be in the regulations. We need some better guidance for that which says that we're going to make sure that the service of these documents is not going to be the responsibility of or a cost to the victim of family violence. There are other resourcing issues such as concerns about cross-examination and whether there is sufficient funding or resourcing for the section 102NA provisions to apply in this case. We are also concerned that if these orders are going to be responding to matters of urgency there is the capacity for the court to be able to respond within that time frame.

We appreciate that these are running in complement to the existing state based legislation. We unfortunately have inconsistency across the country in terms of the effectiveness, operation and form of the state based legislation. I appreciate that we need to look at something that is consistent and operates at a federal level, but we also need to make sure that it's something that's going to be properly resourced.

**Senator McALLISTER:** This morning the Law Council warned of a 'tsunami' of demand should this system be stood up and echoed some of your concerns about regional centres. Do you accept that the opportunity to seek orders of this kind in the family law jurisdiction could produce a very large demand?

**Ms Matthews:** Again, that might vary across the country a little bit, depending on what the state based legislation offers the victim of family violence. I am afraid that where somebody might not have been successful

in their state application—and that might be because they are in fact a perpetrator of family violence—they might opportunistically take advantage of this legislation to name their victim as the perpetrator. We see this in family law documents now, where there are false allegations made against victims of family violence. There are concerns that the court is going to be dealing with this added difficulty and that in some states it may well be dealing with large numbers because the legislation that is in place in those states for the immediate crisis of family violence is not responding well enough to the need in those particular states.

I come from Victoria. We have quite good legislation in relation to family violence protective orders that are in place. They are largely being implemented or initiated by police, but there are considerable delays in those matters being finalised even so, and there are still problems in implementation there. So, in some states where the legislation is rather less well drafted and less focused on safety, it may well be that there would be an increased demand for the Family Court to fill the gap that exists.

**Senator McALLISTER:** I note that the National Family Violence Prevention and Legal Services Forum has been unable to join us today. Are you in a position to talk specifically about the risk of adverse consequences for First Nations women?

**Ms Matthews:** I'm sorry that they're not here. Generally, we try to avoid speaking about that, which we're not in everyday contact with, but certainly some of our members working in some areas have a higher representation of Aboriginal and Torres Strait Islander women in their client cohort, and our submission makes brief reference to the likelihood of there being adverse implications for Aboriginal and Torres Strait Islander women. What we do tend to see is that, where there is legislation that's creating an opportunity for something that might be seen as a punitive response—and I appreciate that that is not the sole purpose of this legislation—we see more marginalised people being caught up in that, with those adverse consequence. There is a view amongst our member organisations that there is a likelihood that Aboriginal women may well be among those women who are misidentified as perpetrators of family violence and be less able to challenge that misrepresentation, because of a level of disengagement with the family law system. We don't have a high number of Aboriginal people engaged in the family law system, which of itself is something of a concern, because it may not be as friendly a jurisdiction for their needs as it could be. I know that there have been some steps—somewhat interrupted by COVID—to really improve that. So, without wanting to overstate our knowledge on this, we're certainly aware that there's likely to be a disproportionate experience of those adverse consequences amongst Aboriginal women, as they are representative of a significantly marginalised group. Again, they may also have difficulty in gaining access to legal representation and to the funds that would be necessary to commence proceedings or make arrangements for service of orders.

**Senator McALLISTER:** I have a final question; I'm conscious that the chair is about to pull me up for time. Based on the information provided to you so far, do you feel confident that you know how this regime will practically operate if enacted?

**Ms Matthews:** I don't feel confident of that. What we are looking at is a proposal for the process of implementation and what is necessary for the states to pick it up and make changes about it. It is to happen in the future. Whether or not there is sufficient time and consultation for this to happen effectively in the time frame envisaged is something that we're not confident about. Also, in this process, while certainly we've had the opportunity because of this inquiry to make comment on the legislation, it's not something that we were consulted about previously, so I'm not aware of what level of consultation the Attorney-General's Department, for example, may already have undertaken with state counterparts or state law enforcement.

**Senator McALLISTER:** Thanks very much. I am yet to find a witness who was consulted on the bill before it was brought into the parliament, but I'm sure they must have talked to someone. We'll ask them this afternoon. That is all I have for this witness.

**CHAIR:** Ms Matthews, I have a couple of questions for you. I note that the Senate inquiries that we run in a wide range of fields are obviously a very important part of our consultation process, including with key stakeholders such as you. Does Women's Legal Services Australia support the intent of this bill?

**Ms Matthews:** Certainly we support anything that's really concentrating on the safety of women. What we are asking people to recognise is that a safety response is not necessarily best achieved by having a look at federal family violence orders. We are not opposed to those orders being in place but we have previously sought to have adopted such things as the early determination of family violence in matters proceeding in the family law system rather than waiting for the facts of the matters to be determined after a long period of time. That sort of thing is really going to address safety as well. So as a standalone feature it is not something that you would say shouldn't happen but you would question if it is necessarily going to achieve the safe outcomes that it is intending to. We think that it needs to be connected with the whole-of-family-law-system response.

In addition to the whole-of-family-law-system response, we would highlight, as mentioned in our submission, the safety problems that arise out of the presumption of equal shared parental responsibility and the failure to judicially determine the impact of family violence early in a process if somebody is in court. These things really contribute to risk for people who are experiencing family violence. We mention as well the Lighthouse Project. We are really pleased to see that there is the intention to roll that out further, as was indicated in the federal budget. We think it needs to be looked at as part of a whole and not just as a single response.

There is a tendency in family violence to think that putting in a restraining order, an intervention order, an apprehended violence order or whatever is going to deal with the issue. As people who are dealing with women who have separated and are responding to family violence post separation we know that they need the full suite of the family law system to actually assist them to recover from that family violence. That is either creating a safe and secure environment for them and their children or ensuring they have some financial independence or capacity for financial independence post separation. It's hard to look at it alone. We do have in place—not equally across the states—that sort of crisis response and family violence protective orders in existence now. The intention is good but it cannot stand alone and think it's going to create safety for people.

**CHAIR:** Ms Matthews, I don't think anyone is suggesting that this should stand alone. This is one of many measures introduced by the Morrison government to support women's and children's safety. There are measures from funding for housing for women fleeing family violence and safety measures in the home through to the enormous support being provided across a whole range of different agencies, so there is no suggestion that this is a standalone measure. I was asking if you support the intent of the bill, because obviously the current situation is that personal protection orders made by the Family Court can't be enforced by the police. That is obviously a very significant barrier. Do you accept that the ability for the orders to be enforced by the police is a positive step?

**Ms Matthews:** Certainly I do. It is interesting that when advising family law clients you have to explain to them that when we're talking about enforcement of anything we're talking about going back to court; we're not talking about ringing law enforcement to get assistance.

**CHAIR:** This now means that you don't have to go back to court in relation to a contravention. You can now use this order to ask the police to enforce the order in the same way that you could with an apprehended violence order or an intervention order issued by a state or territory court.

**Ms Matthews:** I do think that's a positive step because it does respond in a way that people think that the order does. However, you still have to go back to court because the person who has breached the order has the right to challenge the enforcement action taken by the police, which is appropriate—they should be able to do that. That's why I think it makes sense that you are able to enforce orders, particularly when the order has been made because there is identification of immediate risk to parties. That certainly makes sense. But we still regularly have women who are unable to cope with the ongoing legal process of responding to breaches—of responding to people not complying with both family law orders and their state family violence protective orders—so I think it's a sensible step. It's very challenging to change behaviour in very large organisations such as police forces. I think the previous senator's question about implementation probably goes to how we see that happening, and I think it's a massive challenge for governments, both state and federal, to make that work.

**CHAIR:** Ms Matthews, I just want to put on the record that you and I have done a fair bit of work in the past in relation to an inquiry that I chaired on family violence law reform. There's absolutely no doubt that any allegation of family violence needs to be dealt with very immediately by the relevant court, including, of course, in the federal context, the Circuit Court or the Family Court—soon to be the merged court. There's no question about the importance of ensuring that all courts deal with allegations of family violence as matters of very high priority.

Some witness today have raised concerns about the final nature of the order, in that it's not open to the court to make an interim order. I just wanted to seek your view on that, and also just to clarify with you that there's nothing in the bill which prevents the court from very quickly making a final order in relation to a family violence order.

**Ms Matthews:** That's my reading of it. There is also the capacity for people to apply for and seek a variation and all of those things. The fact of a final order being made doesn't mean that people lose all rights going forward, which I think is appropriate. The—

**CHAIR:** Just to clarify, there's also the capacity for state and territory courts to make some variations to federal orders where required, particularly where there might be some sort of conflict. I guess there is the inherent flexibility, if family circumstances change or if threats of family violence change—there's a whole range of things that can change, of course—which might require a variation or an adjustment to family violence orders.

**Ms Matthews:** Yes. It is a balancing act as to whose rights you're protecting in this. Currently, in the state orders, the orders have a duration that's specified, in most cases, in the orders. It's possible for these to be extended on an ongoing basis, but it's something of a burden for the victim of family violence to have to return to court to ask for an extension of that time. So there's benefit in the starting position being that those orders continue.

**CHAIR:** Thank you very much. I'll now invite Senator Waters to ask questions.

**Senator WATERS:** Thank you so much, Ms Matthews, for all your time today and for the excellent work that's gone into not only this submission but all of the previous submissions. There are certainly some common themes there, and I appreciate your tenacity and persistence in advocating for some of those reforms. I hope that at some point many of those—hopefully all of those—will be in place. I commend Women's Legal Services for their five steps to safety in family law program, of course.

I note the number of questions that you've asked in your submission. I think it would be useful for this committee to ask them of the department, so we can get some answers both for you and for us. I thought they were all very useful questions to learn the answers to, so hopefully we'll get the chance to do that.

I'll go to my questions for you. First of all, to the systems abuse and the potential for federal family violence orders to be weaponised, for the [inaudible] to be misidentified—that's been identified in your submission and by a number of other submitters as well. You also said it was a gap in the bill. How do you propose that that be fixed? Can it be fixed? And, if so, how would you fix it?

**Ms Matthews:** I don't want to come here with only criticism and no solutions, but I think it is really challenging, despite some real improvements in the understanding by judicial decision-makers of the nature of family violence and the likelihood of this happening. I think one of the things that we need to do is to make sure that there is a fairly quick turnaround, so that there is the opportunity to undo any damage done by the accusation. What we ask our police to do when we are talking with them is—if a woman is identified as a perpetrator of family violence—that they immediately think twice about it, because the evidence is such that family violence is very gendered. It is most likely that it is an incident of violence against a woman, being perpetrated by a man. That's not the exclusive way that family violence occurs, but that is likely to be the case. And it is quite possible in legislation to actually make reference to that gendered nature of family violence.

As an advocate in court, being able to refer to legislation that identifies that really does give you some opportunity to overcome any inherent dismissiveness that might sometimes be present in decision-makers, for example, when you might be wanting to introduce the notion of the likelihood of the violence not having been committed by a woman. We have examples of that in other pieces of legislation across the country. Certainly, the Victorian legislation in relation to family violence includes that statement in relation to the gendered nature of family violence, and I think that the definition that we have in the Family Law Act presently about family violence is very much showing understanding of the nature of family violence. So we would really like that to be brought to the forefront of decision-makers' minds when they're responding to applications of this nature.

**Senator WATERS:** Thank you, there are some good suggestions there. It also links in with the need for good understanding, expertise and specialist training for the relevant judicial officers, and for the police, for that matter. That background has been covered an awful lot. At the minute, do you think that registrars and judges within the family law system already have that expertise? Or do you think there's a need for additional training?

**Ms Matthews:** I do think there is a need for additional training. There's a high degree of exposure to family violence matters that occurs in the family law system that the registrars and judicial officers observe. They're not naive about its existence. But most matters that go through the family law system are resolved without the judicial officers making a decision about the existence of family violence. The system relies on people being able to negotiate and resolve issues. What we see from our services—because we're telling the story from the perspective of women who have experienced family violence and are financially disadvantaged—is that it's quite likely that they have not been able to access the level of legal support that they might need to progress through a family law process to actually go the distance. Often it's a process of attrition, and they will consent to stuff that may not be safe. That's sort of general; that's not talking necessarily about what's going to happen with these federal family violence orders, but I think that this is the reality. And, not to dismiss the understanding of the judicial officers, they are not seeing what's going on outside the court. It's a very common practice, when a matter is resolved, for the parties to go inside, to be told by the judicial officer: 'Well done; you're really thinking about your children. You've resolved this matter, off you go.' What they have not seen is the actual fear in the face of the woman who might have conceded something because she doesn't have the wherewithal, whether that be emotional or financial, to continue in that battle. So I think that there is an awful lot of room for further exposure for our judicial officers

to really understand the dynamic of family violence generally, and also how it presents in the system and in the court building, if not necessarily in the court room.

**Senator WATERS:** Do you feel similarly about police officers and police forces around the country, in relation to the existing level of training that they get and whether that is adequate as it is?

**Ms Matthews:** Yes. As I said before, you are looking at very large organisations, with police forces. There is a large amount of training, and that is going to vary from state to state as to where the family violence emphasis might be. But, as a senior Victoria Police officer commented at something I was attending recently, Victoria Police, for example, is a very large ship to turn around. So I think that while there is some excellent training, and we have had the opportunity to observe some of the training that is undertaken by police in my home state, there is still cultural change that needs to be achieved, and that can't be done simply by training. You can't train away all of the problems that might exist. I think it's a very big picture thing which we need to address in the national plan if we're going to be looking at having positive approaches by those in authority to marginalised people experiencing family violence.

**Senator WATERS:** Thank you. I'll be asking the department whether or not this issue will be addressed at that national women's safety summit. I'll be interested to hear the response. The Law Council raised that they thought that better information sharing and harmonisation of definitions of family violence across the jurisdictions would be—the absence of that wouldn't be a barrier to these family violence orders working, but it would be highly desirable for them to work as well as possible. What is your view on the need to have more-harmonised definitions of family violence across all of the relevant jurisdictions?

**Ms Matthews:** I have been in some discussions with some of the Law Council people about this. Generally, a harmonised definition is going to be really helpful. What we have in the Family Law Act, as I said before, is a very good definition of family violence. It's a very good one to work with. It doesn't just talk in the abstract. It gives people a real feel for what that family violence is going to be, and I think that is a good thing. We do have inconsistent definitions of family violence across the country. The definition of family violence in the Victorian legislation is also very good. The long practice that is applied of providing examples is a good way of doing this. We have some poorer definitions in some other states, such as New South Wales. But we also have inconsistencies even in definitions of family violence across other federal legislation. I think the starting position that we've got with the legislation in the Family Law Act is a good definition. It's really getting people to understand what that really means. There is a challenge and, again, I think it is a cultural shift to get people not to see family violence as simply physical violence that leaves a mark and an injury that you can take a photo of or have the doctor report on. Certainly the behaviours that you see for people who have experienced family violence, the ongoing impact for them is something that is also very, very important. So when you're looking at orders that are offering protection, you need to be looking at the ongoing impact of the family violence on the victim, and not just what was the most exciting incident that can be brought to the attention of the court.

**Senator WATERS:** Yes. I'm in full agreement. We covered some of these issues earlier. The concern is that there might be different access to these federal family violence orders because there are not enough registries of the Federal Circuit Court. The concern would be that urban folk could have access to these new federal orders, whereas regional folk might feel like it's not really within their reach and they can only access the state system. Do you agree with that? What do you propose we do to alleviate that?

**Ms Matthews:** I think we have that sort of postcode-justice issue within the states in any case. I think the Federal Circuit Court and Family Court when it introduced its COVID list and was looking at doing things remotely in that way it was a very good move. We did have some consultations with the Chief Justice about that. Women's Legal Services Australia was really quite keen to see that family violence matters could be dealt with with the convenience and efficiency of a remote hearing. One of the advantages of that is that it certainly does alleviate the problems of circuit courts, which are a very pressured environment for anybody to be seeking assistance in. If you're traumatised, that's not the environment for you to be in. Also, there are some great efficiencies in that the court can divert people to less busy registries to deal with matters, regardless of where they may live. So I would be hopeful that anything that occurs takes advantage of the technology that has been embraced as a result of the unfortunate pandemic. I think that there are ways to be able to alleviate that. We just have to change the thinking to make sure that people recognise that this online hearing is a serious judicial process; it's not just googling.

The other thing that you mentioned before was the gaps in the multiple different systems. Again, when you are looking at resourcing and at differences in geographic areas, I think that sharing data and information between the child protection system, the state family violence system and the family law system really does need some



attention and improvement. While there's an intention to address this, I think we really need to look very carefully at it if we're going to have a successful implementation of any family violence legislation at a federal level.

**Senator WATERS:** Thank you very much for your time and your expertise.

**CHAIR:** Ms Matthews, thank you very much for your time today. That concludes the questions in relation to your submission. We really appreciate the effort that you've put into the submission and your evidence today.

**Ms Matthews:** Thank you very much, senators. I appreciate the opportunity.

**BENNETT, Mr Shane, Group Manager, Families Group, Department of Social Services [by video link]**

**DOHERTY, Ms Greta, Branch Manager, Family Safety Policy, Department of Social Services [by video link]**

**MAUNDER, Ms Celia, Acting Assistant Secretary, Family Law Branch, Attorney-General's Department**

**SMRDEL, Dr Albin, Acting First Assistant Secretary, Families and Legal System Division, Attorney-General's Department**

[15:57]

**CHAIR:** A little bit earlier than scheduled, we now welcome representatives of the Department of Social Services and the Attorney-General's Department. Thank you so much for taking the time to give evidence today. Information about parliamentary privilege has been provided to you and is available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state or territory shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The committee has received your submissions as submissions 1 and 6 respectively. If you wish to make an opening statement, we would be grateful if you could distribute that, and we will incorporate that into the *Hansard*. Please indicate if you wish to make any corrections to your submissions.

**Ms Maunder:** We have no corrections to make to the department's submission. We have provided some written opening remarks to the committee.

*The document read as follows—*

The Attorney-General's Department welcomes the opportunity to appear before the Committee as part of its inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021.

Federal Family Violence Orders are intended to be an additional option for protection of victims of family violence at the federal level, complementing the protections afforded by state and territory family violence order schemes.

The Bill has been developed in response to long-standing calls from expert reports and Commissions to remedy the gap in criminally-enforceable protection at the federal level for those experiencing or at risk of family violence.

Currently, family law personal protection injunctions are only civilly-enforceable, and the onus is on the victim to bring a civil action for contravention in the family law courts. The dynamics of power and control in relationships involving family violence can make this difficult for the victim, and a lack of immediate consequences could lead to an escalation of conflict. Alternately, for criminally-enforceable protection, the only current option is protection in a state or territory court under a family violence order.

Federal Family Violence Orders would be available to those who have a family law matter before a listed family law court, and who do not wish to navigate a separate state or territory system to obtain criminally-enforceable protection.

Importantly, a listed family law court would also be able to make a Federal Family Violence Order on its own motion. Given the family law courts have significant experience in working with litigants with limited legal backgrounds, the courts are well placed to identify persons who may be in need of a federal family violence order, but due perhaps to inexperience or trauma, have not applied for one.

Available as a final order at any time during the relevant proceedings, Federal Family Violence Orders have been designed with regard to minimising exposure to court processes, and limiting personal and financial impacts in the context of seeking protection.

States and territories have comprehensive family violence systems and will, appropriately, continue to be the primary avenue for victims to seek protection orders.

The Federal Family Violence Orders would complement, rather than replicate, those state and territory systems, and as noted above, are only available in the circumstances of a family law matter.

The measures in the Bill have been developed in close consultation with states and territories over a significant period of time, including through a dedicated working group comprising courts, justice and policing agencies, and represent approaches negotiated with jurisdictions. They also take on board practical implementation matters raised in the context of the Committee's consideration of the initial legislative measures in the Family Law Amendment (Family Violence and Other Measures) Bill 2017. This consultation has underpinned key measures to delineate between Federal Family Violence Orders, personal protection injunctions, and state and territory family violence orders.

Measures in the Bill are designed to safeguard against inconsistent orders between the federal and state and territory systems. These include restricting an applicant from applying, and a listed court from making, a Federal Family Violence

Order where there is a state or territory family violence order in place that protects and is directed against the same persons, and from making a personal protection injunction that is inconsistent with a state or territory family violence order.

Consultation has also ensured that state and territory police will be able to enforce breaches of the new orders, consistent with procedures that are already used, offering enhanced enforcement arrangements in this Bill as compared to the Family Law Amendment (Family Violence and Other Measures) Bill 2017 previously before the Committee.

A number of submissions to this Committee have queried how the orders will be enforced. Federal Family Violence Orders will be recognised on the National Domestic Violence Order Scheme and enforced by state and territory police.

The National Domestic Violence Order Scheme currently provides for all state and territory family violence orders issued from 25 November 2017 to be automatically recognised and enforceable across Australia.

Through recognition under the National Domestic Violence Order Scheme, police will be able to use the local enforcement powers and processes with which they are already familiar, to also handle federal family violence order breaches.

Measures to support the implementation of the Bill are critically important, and are being progressed separately to this Bill.

A commencement up to 12 months after Royal Assent of the relevant Bill measures is designed to allow jurisdictions to make amendments to the National Domestic Violence Order Scheme model laws, and for the roll-out of other implementation measures.

As part of the 2020-21 Federal Budget, the Australian Government provided \$1.8 million funding over four years to support the implementation and enforcement of FFVOs.

This includes funding to ensure police and judicial officers receive the training and information they need to manage these cases, awareness raising, and to support information technology solutions for the courts and police.

A number of submissions to this Committee have outlined broader concerns with the design and operation of the family law system.

The Government is committed to ongoing improvements to the family law, court and legal assistance systems to ensure that they help families separate in a safe, child-centred, accessible, and timely way, and is supporting a number of new initiatives to this effect.

Critical reforms, such as the changes proposed by this Bill which are targeted at a specific area of identified need, form part of these efforts and should continue to progress.

**CHAIR:** There seems to be an audio problem. The Department of Social Services is appearing via videoconference. Do you have more than one screen activated at this time? We seem to be getting feedback.

**Mr Bennett:** We have just the one screen.

**CHAIR:** We can hear a tiny bit of audio but not enough for you to be audible.

**Mr Bennett:** Chair, can I suggest that we—

**CHAIR:** I'm sorry, Mr Bennett, we can't hear you. There is a tiny bit of audio but there's a problem with the audio. We might go to the Attorney-General's Department first, and you might be able to connect via teleconference. Could you please contact the secretariat and connect via teleconference because your connection via videoconference is not working. We will go to the Attorney-General's Department first. Senator Hughes.

**Senator HUGHES:** Thank you, Chair. Could the Attorney-General's Department take me through the consultation process. What consultation has been undertaken in regard to the bill? Could you outline the stakeholder input that there has been in the drafting process.

**Ms Maunder:** The Family Law Amendment (Federal Family Violence Orders) Bill is the result of significant stakeholder input over several years about improving family violence protections within the family law system. One of the drivers of this reform was the Victorian Royal Commission into Family Violence, and also the Australian and New South Wales law reform commission inquiries into family violence and improving legal frameworks. The recommendations arising out of both of those inquiries included that the federal family law system includes a criminally enforceable protection order. Both of those inquiry processes informed significant consultation with the public and with key stakeholders. We are aware that sectoral stakeholders, including members of the legal profession and also family violence service providers, contributed to those inquiries. For example, a consultation paper was jointly issued by the Australian and New South Wales law reform commissions as part of their inquiry, which proposed specific questions and proposals relating to the operation of the personal protection injunction provisions within the Family Law Act. We are aware that the Victorian royal commission accepted submissions in relation to the operation of the personal protection injunction provisions as well.

More recently, the Joint Select Committee on Australia's Family Law System held public hearings and received submissions from a wide range of stakeholders. The recommendations arising out of that committee's second interim report included that federal protection orders be able to be effectively enforced by state and territory

police. Since that time, and in response to a COAG tasking, a national working group has been established that has been working together on the development of these reforms. The working group and its legislative, business and technology advisory groups have brought together expertise across police and court operations, information-sharing technology, and legal and business frameworks that currently support the enforcement of domestic violence orders nationally.

It is also worth noting that measures that would have criminalised breaches of family law personal protection injunctions were first introduced into the parliament in the Family Law Amendment (Family Violence and Other Measures) Bill 2017. There was an exposure draft made of that piece of legislation. As part of that, the government received a number of submissions relating to those reforms as well. Those provisions were ultimately removed from that bill prior to passage, to allow the government to do further work with regard to the enforcement of the orders. That work has been the focus of the last several years, and we're pleased to say that enforcement arrangements are very much in place and we have in-principle agreement from all states and territories that the orders—now known as federal family violence orders—will be recognised and enforced nationally.

**Senator HUGHES:** With regard to the states and territories, what has their level of engagement been? And what sorts of provisions does the bill contain to manage any duplication of or inconsistency in state and territory processes?

**Ms Maunder:** States and territories have really been co-designers on the policy that underpins the FFVO measures as part of this bill. As I said, the National Personal Protection Injunction Working Group that was established involves stakeholders from each jurisdiction—from their policing and justice agencies, as well as their courts. The department has had very regular contact and engagement and consultation with that group in the course of the last couple of years in order to settle and agree on the approach that is now represented in this bill.

In designing the measures in this bill, we have been extremely mindful to ensure that they complement and don't replicate or otherwise risk inconsistency with the state and territory DVO frameworks, which we very much see as continuing to be a key mechanism for people to seek protection. So the bill contains a number of really deliberate measures designed to alleviate the risk of inconsistency in orders made under the different federal and state and territory schemes.

For example, a person will not be able to apply for an FFVO, nor the court make an FFVO, if that person already has a state or territory family violence order in place that protects them and is directed against the same person. The bill contains obligations on persons applying for orders to notify the courts whether in fact such state and territory family violence orders are in place, as well as requiring the court to undertake appropriate checks to satisfy itself of this. As noted by the chair earlier in the hearings this afternoon, arrangements have been made in terms of various aspects of the implementation of this bill, including providing the courts with court portal access to the National Police Reference System to be able to undertake these checks for that purpose. The government has committed funding to the Australian Criminal Intelligence Commission to provide that court portal access for the family law courts for this purpose.

Another of the bill's key design features designed to alleviate risk of inconsistency is that state and territory courts, in proceedings to make or vary a family violence order, will have the ability to revoke or suspend a federal family violence order if it risks being inconsistent. That's just another way we are trying to promote improved interaction between the two systems.

**CHAIR:** Thank you very much, Ms Maunder. The Department of Social Services is now attending our hearing via teleconference. I welcome the Department of Social Services.

**Mr Bennett:** My apologies. We did a test of the technology, but it did not work when we tried to call in.

**CHAIR:** We will now resume our panel with both the Department of Social Services and the Attorney-General's Department. Senator Hughes, I'll ask you to continue.

**Senator HUGHES:** Just going back a little bit, if I could, to the enforcement of the FFVOs, again, states and territories obviously have their own police forces, so how would police enforce them?

**Ms Maunder:** Federal family violence orders will be recognised and enforced under the National Domestic Violence Order Scheme, which is the scheme that currently facilitates recognition and enforcement of family violence orders between the jurisdictions nationally. So, over the last two years, we've worked quite extensively with police, courts and justice agencies to ensure that state and territory police will be well equipped to take enforcement action in the event of an FFVO breach. In 2019, the then Council of Attorneys-General and Ministerial Council for Police and Emergency Management agreed in principle that the orders would be recognised and enforced by the police forces across Australia. Through recognition under the National Domestic

Violence Order Scheme, an FFVO will be treated as a local order, meaning that, if the person is arrested and charged for a breach, the person will be tried in the local jurisdiction, and local rules regarding enforcement powers and proceedings will apply. This is the same process that currently applies, as I said, in relation to the mutual recognition and enforcement of family violence orders between jurisdictions nationally.

**Senator HUGHES:** Okay. Would this bill streamline court processes?

**Ms Maunder:** One of the key policy intentions underpinning the development of this bill and the establishment of federal family violence orders is around creating efficiencies for those who are in the family law system and who would prefer not to have to engage in a separate state and territory court system in order to obtain criminally enforceable protection. So, on that basis, yes, it is a key intention of the bill.

**Senator HUGHES:** What's the role expected of independent children's lawyers? And tied in with that are some of the concerns that were raised by earlier witnesses around resourcing. Maybe you could put those into a little bit of perspective and outline what funding the government has provided to legal assistance services in the most recent budget.

**Ms Maunder:** The role of independent children's lawyers within the bill is really designed to align with their duties to prioritise the welfare of the child, and so, in the context of applications for federal family violence orders in relation to children, independent children's lawyers will have the ability to apply for an FFVO on behalf of a child, and, if that application is accepted, the ICLs will also have a role in supporting the child through that process.

In terms of funding for legal aid commissions, it's a joint responsibility of the Commonwealth and the states and territories. The Commonwealth is providing over \$2.3 billion of quarantined funding over five years, and it is a matter for legal aid commissions to determine, within current resourcing, how they then allocate that funding.

**Senator HUGHES:** How is the government going to monitor whether or not this funding that it has committed is going to be sufficient?

**Ms Maunder:** Certainly, we intend to closely monitor the implementation of the FFVO scheme both in terms of its delivery against the stated policy objectives and in terms of its broader implementation and how funding and other resourcing are stacking up against usage. That will be quite closely monitored, and we expect that, if resourcing shortfalls are identified, the government would consider any shortfall and how to address that.

**Senator HUGHES:** Okay.

**CHAIR:** Thank you very much, Senator Hughes. I will now give the call to Senator McAllister.

**Senator McALLISTER:** Most of my questions are for AGD. Most of the witnesses that have presented today had no knowledge of this bill before it was introduced to the parliament. I note that there has been a long-running national discussion in different jurisdictions and different fora about broad practices of family law reforms, but why did the department not undertake any consultation process on the specifics of this quite complex legislative reform? Why was there no exposure draft?

**Ms Maunder:** The department's perspective on that is that stakeholder consultation has significantly underpinned the policy provisions within the bill, through this longstanding process, including recognising that the bill delivers against several of these expert committee reforms and recommendations. Our focus over the last several years has been on very closely engaging with the states and territories in terms of ensuring, following concerns raised in the context of the family violence and other measures bill, that these measures are able to be enforced, and working with states and territories in order to secure their agreement on the recognition and enforcement of the orders and the other many implementation measures that need to be settled between the jurisdictions to ensure that the FFVO scheme can be appropriately implemented and enforced.

**Senator McALLISTER:** Was it the department's decision to proceed directly to tabling without an exposure draft, or was this a decision of the minister?

**Ms Maunder:** I may need to take that on notice.

**Dr Smrdel:** The only thing I would add to that is: because a forerunner of these federal family violence orders was already presented as a bill to the parliament in 2017—which, as Ms Maunder has already outlined, was on the back of significant consultation arising out of law reform commissions and the Victorian royal commission as well—a bill had already been introduced to the parliament. Ultimately, the provisions were excised and have now been reintroduced in the form of federal family violence orders. So I think there's already been an extensive period of consultation underpinning the first bill, as a result of a previous committee investigation into the forerunner bill; at that point, it really needed a lot of consultation with the states and territories to iron out some of the issues that were identified in that previous bill. I certainly concur with Ms Maunder that, in terms of any

decision, we would have to take this on notice, but it is worthy of note that this is a second bill on this issue. It has, admittedly, significantly changed from the first iteration, but nonetheless it is coming on the back of a previous bill in this area.

**Senator McALLISTER:** I assume the department has reviewed the submissions that have been made to this inquiry?

**Ms Maunder:** Yes, the department has.

**Senator McALLISTER:** Having considered the evidence put before us, including the advice from the Law Council and other organisations that represent victims of family violence, does the department believe that the bill would have benefited from consultation with victim-survivors and their advocates before it was tabled?

**Ms Maunder:** We would put forward that those stakeholder views have already had an opportunity to inform the development of the policy underpinning the measures in this bill, including through the previous open submission and exposure draft inquiries already outlined.

**Senator McALLISTER:** If submitters have said they are still uncertain about how the bill will operate in practice, it's not an insurmountable objection to the bill but it's a non-trivial objection, because these submitters are the people who will be representing victims of violence in the processes that you seek to implement. Does the department believe that it has resolved most, if not all, of the uncertainty identified in these submissions?

**Ms Maunder:** Implementation of the FFVO bill has been a very key focus of the department, in addition to and alongside supporting the development of the bill's provisions. Arrangements for the implementation of the bill are substantially advanced—recognising that the bill as it's drafted includes a 12-month commencement timing to allow for the rollout of these implementation measures.

With respect to enforcement, we have draft amendments to the National Domestic Violence Order Scheme model laws that are well advanced. They are in draft form and will be adopted by states and territories following, or on the occasion of, the passage of this bill. We also have arrangements in place with the Australian Federal Police for setting up an automated system that would enable the provisioning of FFVOs onto the National Police Reference System, and that work will continue to proceed once the bill measures have been settled.

We also have arrangements. The government has committed funding to support training and awareness raising in respect of the FFVOs, and preliminary work is underway to consider the content that will underpin both of those activities as well. As referenced by the chair earlier in the hearings today, we have also agreed with states and territories a protocol for the service of FFVOs on occasions in which persons against whom the orders are directed are not before the court, and we are continuing to work with states and territories on how that service protocol will be operationalised.

We're also continuing to engage very closely with the family law courts on how FFVO proceedings will operate. We think it's worth noting that the bill provides deliberate flexibility for the courts in respect of how the framework is actually implemented, which will allow for the courts to monitor the new jurisdiction afforded under the FFVO framework and for appropriate case management processes to be implemented and amended as required. In connection with that, we would also note the existing work underway in relation to case management pathways in the family law courts as a result of the implementation of the Federal Circuit and Family Court of Australia on 1 September this year.

**Senator McALLISTER:** Thank you for that update. My question actually went to the concerns raised by submitters. What I am wondering is: would it be possible for the department to provide the committee with a supplementary submission? We will need to make recommendations about this bill at the end of this process. If you are confident that the matters raised by the witnesses who have come before us today—the Law Council, Women's Legal Services Australia, Legal Aid NSW and the Family Law Practitioners Association of Queensland—are being addressed through some other process or have already been resolved, could you give us some indication of that, because, to be very frank with you, the information before us is that there is enormous uncertainty amongst advocates and the organisations that represent victims, and I am concerned that there's a disjuncture between your level of certainty about how well this is all going to work and the views being put to us by actual practitioners in the system. So do you think you could undertake to provide us with a supplementary submission that goes through the evidence that's been put before us by other witnesses?

**Ms Maunder:** Yes, the department can do that with respect to the implementation measures. As I said, with respect to court proceedings, the bill is deliberately flexible in affording the courts the flexibility to handle the matters with regard to the circumstances of the case in the manner they determine to be most appropriate. Certainly on the basis of the evidence heard earlier today, we can look to address those by way of supplementary submission.

**CHAIR:** I think that would be helpful because there has been a wide range of issues raised. If the department was able to directly address each of those key issues by way of a supplementary submission, that would really assist the committee. Thank you.

**Senator McALLISTER:** Thanks very much, Chair. Ms Mauder, you mentioned in your earlier remarks the funding arrangements that have been put in place. Submitters have said that these new arrangements will require further funding for the Family Court, funding for independent children's lawyers, funding for legal aid, funding to train police officers—and I should have said, in the funding for legal aid, funding to support additional individuals to prevent people from being cross-examined by perpetrators. Is it the department's submission that the money allocated in the budget is sufficient to meet the demands anticipated under these reforms?

**Ms Mauder:** The department has been engaging in efforts to identify the expected usage and uptake of the FFVO scheme. Clearly, there are some complexities involved here. It is a very novel framework. There is no direct proxy through which to draw expected FFVO numbers. But on the basis of data available regarding personal protection injunctions that are made, and also having regard to state and territory family violence orders that are made by persons other than police—so by way of thinking what might be proxy circumstances to FFVO applications and orders—we have been working to identify what might be the expected usage of that. It's fair to say that, based on current modelling, we do not expect that there would be a large proportion of persons who would otherwise seek protection within the state and territory family violence order system to transfer across to the federal system in terms of obtaining federal family violence orders. Federal family violence orders, as I said, are intended to complement rather than replicate the protections available in the state and territory systems and would be available to a more limited subset of persons who are already before the family law system.

As part of the 2020-21 budget, the government committed approximately \$1.8 million over four years to support the implementation of FFVOs. This funding was directed against measures to support information-sharing about FFVOs, to ensure that service can be effected, and to provide for appropriate training and awareness-raising so that users and those involved in the FFVO implementation have the resources and information available to enable the effective implementation there.

**Senator McALLISTER:** What does the modelling suggest in terms of, for example, annual applications for federal orders?

**Ms Mauder:** Based on available data at the moment, with extrapolations and assumptions, we would be looking at fewer than 1,000 FFVO applications and variations a year. Clearly, there are a lot of unknowns underpinning those assumptions. We would see a very strong role in the ongoing monitoring of the FFVO scheme, once it's in place, to assess the real-world impact against those expectations.

**Senator McALLISTER:** Is it the department's submission, then, that the money allocated in the budget to the courts and to the legal aid commissions is sufficient to meet demand at that scale?

**Ms Mauder:** In terms of the budget currently allocated to the implementation and enforcement of FFVOs, it has been directed against the areas I identified earlier. We would just otherwise note that current modelling does not suggest significantly large numbers of FFVO applications each year, but we certainly would be monitoring how that plays out.

**Senator McALLISTER:** Is the government committed to providing additional resources should the demand be significantly different from what you've projected?

**Ms Mauder:** That would be a matter for government, but certainly the intention is to ensure that this is a workable scheme that provides real protections for people.

**Senator McALLISTER:** I wanted an update on the project under the national plan to create a new national database for sharing information about family violence and child protection orders across jurisdictions. We've talked about this before, in estimates; there was supposed to have been a scoping study completed earlier this year. Has that study been initiated?

**Ms Mauder:** I assume we are referring to the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems?

**Senator McALLISTER:** Yes. Thank you for knowing the name of the program. I appreciate it, because I can't always remember the exact title.

**Ms Mauder:** Not a worry. I may need to take that on notice and confirm the status of that. Certainly the framework remains under active development, being led by the family violence working group, but I'm sure I can provide details about the technology-scoping solution that you've referenced.

**Senator McALLISTER:** I'd like to know whether the study has been initiated, I'd like to know when it is due to be completed, and I'd like to have an anticipated date for when the actual technical product will be available for people working within the system. I appreciate that that needs to be taken on notice. Thank you.

**CHAIR:** Thank you so much, Senator McAllister. I've got a couple of questions to add to those asked by Senator Hughes. I also note that you are going to come back and address some of the specific issues raised in the inquiry today. I am keen for the Attorney-General's Department to address the concerns raised by the two police associations today—the Queensland Police Union of Employees and the Police Federation of Australia—in relation to enforcement, in relation to resources and in relation to ensuring that police have access to information about orders issued by the Family Court so that they are in a position to best enforce these orders. As we heard from Dr Cochrane, from Relationships Australia, it is no good having family violence orders if they are not properly enforced. We have seen some terrible tragedies involving women and children who had family violence orders made in their favour, so the enforceability of these orders is absolutely critical. I know that our government will want the Australian community to have absolute confidence in the enforceability of these orders. Would you be able to address some of these issues, please.

**Ms Maunder:** As referenced earlier in my evidence, federal family violence orders are under the National Domestic Violence Order Scheme, and states and territories have agreed in principle that that is the mechanism by which these new orders will be recognised and enforced. Arrangements to implement the enforcement of FFVOs are well underway, including, as referenced earlier, draft amendments to the model laws for the National Domestic Violence Order Scheme, which will be enacted by states and territories. There is a draft in progress of amendments to those model laws. Funding has also been committed for the Australian Criminal Intelligence Commission, which administers the National Police Reference System, to provide court portal access for the federal family law courts in order for them to be able to undertake relevant checks required from them under the bill and to check for the existence of state or territory family violence orders as well. The National Police Reference System enables family violence orders to be shared between police and courts across Australia, and—

**CHAIR:** Do you have absolute confidence in that system, though—that no order is going to fall through the cracks in that national system?

**Ms Maunder:** It is the interim solution that currently supports the availability and accessibility of family violence order information between the jurisdictions. We understand there are arrangements in place for a transition to a longer-term solution, but clearly there is a role for this interim solution at present. Once the longer-term solution is in place, our expectation will be and we will work with relevant agencies to ensure there are not gaps in protection for the availability of federal family violence orders. While there is recognition through a commitment to exploring a longer-term solution, clearly there remains a more pressing need for domestic violence orders to be recognised and enforced nationally. The interim solution, known as the National Police Reference System, is currently the tool that supports that and is appropriate to be used for provisioning federal family violence orders as well.

**CHAIR:** So every single order made by the Federal Circuit and Family Court will be on that database?

**Ms Maunder:** Yes. We intend for an information-sharing memorandum of understanding between the courts and the Australian Federal Police to be established to support that, and there will be arrangements—what that looks like in practice is to be established—whereby the courts will advise the Australian Federal Police of the existence of a new federal family violence order. That will then be supported by an automated process that the government is funding provisioned to the NPRS.

**CHAIR:** I also want to ask about the budget measures—I referenced this earlier in the hearing—in relation to various issues raised about resources and training. Could you please run through the budget measures that have been decided by the government to support the introduction of federal family violence orders.

**Ms Maunder:** The budget measure that was part of the 2020-21 budget was approximately \$1.8 million over four years. That comprised approximately \$0.5 million for the development of the automated system to provision FFVOs to the NPRS; funding for the development of online training modules for state and territory police, state and territory courts and federal courts on the new orders and their enforcement; funding for the development of an awareness-raising campaign for the community and key stakeholders concerning the new orders; funding for the Australian Criminal Intelligence Commission to provide court portal access to the system to the family law courts; and funding for the service of federal family violence orders on persons against whom they are directed, which includes components for the listed courts with respect to associated administrative work as well as costs expected in relation to service.



**CHAIR:** What flexibility do the courts have or does your department have to monitor how this funding is used and to provide further funding, depending on the outcomes and the challenges which may arise, in relation to the introduction of federal family violence orders?

**Ms Maunder:** A number of the budget measures relate to discrete pieces of work. We are already engaging closely with those entities involved in delivering that—for example, with the Australian Federal Police in respect of the automated system for the NPRS. With respect to the Australian Criminal Intelligence Commission and the court portal access, we intend to procure service providers to support the development of the online training modules and to support the awareness raising campaign as well. With the funding allocated to the listed courts and otherwise to support service of federal family violence orders and associated administrative work: that is provided over the next few years. Our expectation would be to engage very closely with the listed courts and with those entities involved in service, to match expenditure against that budget allocation with the usage, and, if a shortfall was projected, to engage with government about what sorts of measures might be available to remedy any such shortfall.

**CHAIR:** There's been a fair bit of discussion today about the importance of orders being made quickly. While there is a final order regime only, and while the court has the discretion to make orders within its own timing, and we know the family court system has a lot of inherent discretion in the way the law is applied, is it the intention of the government to ensure that federal family violence orders can be made as quickly as possible, recognising the seriousness of any particular matter and that the courts have full flexibility?

**Ms Maunder:** The bill provides for flexibility for the listed courts in terms of how the FFVO proceedings are heard, including in conjunction with the qualifying family law proceeding. The bill enables a federal family violence order to be applied for and made at any time during the relevant qualifying family law proceeding. Otherwise flexibility will be important to ensure that case management processes can be adapted as the FFVO scheme is rolled out.

In terms of developing the FFVO model that appears within the bill, a number of factors were taken into account. The FFVO model represents the balancing of those factors as agreed with the working group. These factors include whether a person has to come back before the family law court to have an interim FFVO made final, if that were the provision within the bill, including in the event that the family law proceeding wasn't resolved in the intervening period. We have had regard to efficiency and cost applications, including what that might mean for multiple court events. The timeliness of protections being available is clearly critical, as is also having regard to the existence of comprehensive state and territory family violence order frameworks, including often their provision for interim or provisional orders, which would continue to be available within the state and territory systems for protection as well. So this model—

**CHAIR:** Sorry to interrupt, but, just to clarify, my understanding is that it's not open to the court under this bill to make an interim federal family violence order, only a final order. You just referenced an interim order. I know you also referenced interim orders made by state and territory courts, but, just to clarify: there's no interim order available. I just want to just clarify that point and also to make it clear that the court has full discretion to bring on a final hearing as soon as it sees fit and within the court's judgement as to the appropriate timing.

**Ms Maunder:** Certainly the bill does not restrict the court in terms of when the court can make an FFVO, that is correct. Also I can confirm that the bill provides for a final FFVO framework. My apologies for the confusion with regard to referencing an interim FFVO simply by way of demonstrating some of the options and considerations that were considered in the development of the bill and what the implications of those might be.

**CHAIR:** So, in other words, it is possible for the court to order a final hearing in relation to an FFVO application, and for that hearing to be held quite quickly. From a practical perspective, and just to be crystal clear about that issue, is that correct?

**Ms Maunder:** Under the bill, the court is able to make an FFVO at any time. There will be a number of practical considerations that will interact with when and at what point in proceedings the court considers it has sufficient evidence before it to make a federal family violence order. That will depend on the circumstances of the case, the evidence before the court, and also whether affected persons wish to test evidence by way of cross-examination as well. So it will be very much dependent on the circumstances of the case.

**Senator WATERS:** Ms Maunder, thanks very much for answering things so comprehensively so far. Most of my questions will be for you. Sticking first with the figures, you mentioned the \$1.8 million over four years. How much specifically was allocated for the training element and how much for the awareness-raising element, please?

**Ms Maunder:** One-quarter of a million dollars has been allocated for the development of the online training modules, and \$100,000 for the development of the awareness-raising campaign.

**Senator WATERS:** Who will create the training modules? What expertise will they have in family violence dynamics?

**Ms Maunder:** We have not yet procured a service provider to assist in the development of that. Certainly, one of the key considerations we will have will be sectoral experience, so we very much have those considerations in mind. At present, we are considering in a preliminary fashion what content might be appropriate to include within the online training modules, but the actual procurement and engagement and construction of the modules is not yet in train.

**Senator WATERS:** Have you sought some input from the sector on how they think those training modules are best designed?

**Ms Maunder:** As we proceed through the settling of the FFVO measures and look ahead to the development of the online training modules, we would see a role for sectoral input, yes.

**Senator WATERS:** Sticking with that theme, is there any contemplation of training that is not just online? Obviously, the pandemic means that much of it will be online, but it's a very complex area, as I'm sure you would appreciate and many of the practitioners do too. Is the online training adequate?

**Ms Maunder:** For the reasons you've identified, we have identified an online model as an appropriate tool, recognising that the modules may need to be adapted as time goes on. We would certainly not want a resource to remain static, so an online training module is facilitative of amendments and updates as things progress. But we would also see a role for delivery of training as well and recognise the importance of engaging with persons as well. So we would see that as being a supplementary aspect. But, for reasons of efficiency and effectiveness, and recognising that the training modules will need to be a useful tool for police forces across Australia as well as for the range of state and territory courts and federal courts, our consideration is that an online module is the most appropriate way to deliver that training effectively to a really broad range of FFVO users.

**Senator WATERS:** Okay. In relation to the \$1.8 million, does that extend to increased funding for legal aid, who gave evidence earlier today that they felt this would create an increased demand on their resources?

**Ms Maunder:** That \$1.8 million is limited to the items I outlined earlier.

**Senator WATERS:** So is there any additional resourcing that will be provided to legal aid—not within that \$1.8 million but any other resourcing?

**Ms Maunder:** Discussions with legal aid commissions in respect of resourcing are continuing more broadly, and it's likely that a range of the new initiatives will feed into ongoing engagement with legal aid about resourcing.

**Senator WATERS:** Right, but there's no specific talk of additional money for legal aid to be able to implement the FFVO work?

**Ms Maunder:** At present, the previous budget measure is the funding committed to this project, and we will monitor usage as the scheme is implemented.

**Senator WATERS:** Likewise, in relation to the demands on the courts' time, yes, a portion of it is training, and I acknowledge that you've funded that, albeit only online training. But, in the Federal Circuit Court and the Family Court, there are already massive delays and under-resourcing—contributing to a failure to access justice, in my opinion. They already need more resources; they already need more judges. Is there a commitment from government to provide more resources and, specifically, more judges in relation to being able to implement this FFVO plan?

**Ms Maunder:** One of the key additional pieces of resourcing provided to the courts is to support the implementation of the Federal Circuit and Family Court of Australia, and there was \$60.8 million over the forward estimates to support that reform.

**Senator WATERS:** Is that the merger?

**Ms Maunder:** That is the legislation, the Federal Circuit and Family Court of Australia Act. That's correct.

**Senator WATERS:** Yes. Sorry, I didn't catch what you said the \$60.8 million was specifically for.

**Ms Maunder:** To support the implementation of the new Federal Circuit and Family Court of Australia.

**Senator WATERS:** Yes, the merger.

**Dr Smrdel:** Senator, it's also to have, consistent with the bringing-together of the two courts, a significant resourcing input of registrars, both senior registrars and registrars. I think in the order of 25 have been funded. It's really to allow the court to have a new case management system which will actually free up judges to be able to

do more judicial kind of work and allow registrars to do some triaging but also do some other lower-level matters that don't need judges.

**Senator WATERS:** Thank you for clarifying that. So already a lot of funding for that other purpose is meant to also facilitate FFVOs. But, from your evidence, I take it that there's no specific funding beyond the training for the courts to implement these FFVOs. Sorry, I'm not speaking very clearly; it's been a very long day.

**Dr Smrdel:** I think it's also the case that, because this is new funding for the courts and they're only just recruiting the registrars now, it's going to take some time for the court to see how everything plays out both with the new legislation and in just getting the registrars and working through the new processes. Then, when that is bedded down a little bit, I think government will have a better assessment of what are the resourcing needs of the court, if any, depending on resourcing already provided.

**Senator WATERS:** Yes. But, for clarity's sake, it's not envisaged that the registrars would be able to order an FFVO? Surely that would be a solely judicial function. Am I right?

**Ms Maunder:** I think that's part of the ongoing consideration of the courts about how best to deliver the FFVO framework, including in conjunction, as Dr Smrdel just outlined, with considering how best to deploy the additional registrar resources.

**Senator WATERS:** So does that mean that the registrars might be issuing the FFVOs and it's not yet decided upon? Is that what you just said?

**Ms Maunder:** I think a number of implementation options remain on the table, yes.

**Senator WATERS:** Thank you. I'll have something further to say on that in due course. Is the ban on cross-examination of victims going to be extended to FFVO applications?

**Ms Maunder:** To the extent that FFVO application hearings involve allegations of family violence—there would be a clear nexus to that there—the cross-examination statutory ban within the Family Law Act provides that the court has the discretion to apply the ban in those proceedings. There are obviously a number of other statutory criteria that can come into play—for example, if someone has a family violence order or a personal protection injunction in place. But we are also retaining that broader discretion in proceedings where family violence is alleged, and we expect that applications for federal family violence orders may well be circumstances in which the courts choose to exercise that discretion.

**Senator WATERS:** Thank you. Pardon me for racing through this, but I'm conscious that we're running out of time. Will the extra funding that will be provided to allow for facilities that prevent direct cross-examination also be applied for FFVOs if the court decides, in its discretion, that that should be the case?

**Ms Maunder:** The cross-examination statutory ban and the supporting scheme are currently being reviewed, and the evaluation report or review of that scheme is scheduled to be delivered shortly. The matters that that review is looking at include the adequacy of funding provided to the scheme, with a view to considering ongoing demand as well. So our expectation is that government would consider the findings of that review in considering what the ongoing needs of the cross-examination scheme are. I should add that the reviewers have been provided with information about this bill and the proposed establishment of federal family violence orders.

**Senator WATERS:** Will FFVOs be discussed at the National Women's Safety Summit? Just a yes or no at this point would be great, given that I have quite a few other questions.

**Ms Maunder:** Our colleagues from the Department of Social Services might be best placed to answer questions about the national summit.

**Senator WATERS:** Okay. I don't wish for a long answer. With all respect, I'm just after a simple yes or no if possible. Are FFVOs on the agenda for the national summit?

**Mr Bennett:** The summit is expected to include a general theme of policing and justice responses.

**Senator WATERS:** Okay. Perhaps I'll seek some more detail on notice. Will there be a new list for FFVOs, or is that in the discretion of the court?

**Ms Maunder:** Again, that's in the discretion of the court.

**Senator WATERS:** Thank you.

**CHAIR:** Senator Waters, we will have to make this your final question. I'm sorry. We are almost at five o'clock.

**Senator WATERS:** Thank you. I'm trying to go as quickly as I can. Is consideration being given to 'consent without admission' FFVOs, such as occur in some state jurisdictions?

**Ms Maunder:** There are some complexities with respect to consent orders. That might be one that takes a little longer than the remaining time. Given it's an issue that has been raised as part of submissions and we have undertaken to provide a supplementary submission, perhaps that might—

**Senator WATERS:** I'll wait for that, then. Thank you.

**CHAIR:** Senator Waters, I'm sorry. We are at five o'clock, and I'm going to have to ask you to put your other questions on notice.

**Senator WATERS:** Okay. Thank you.

**CHAIR:** Thank you very much for that. I thank representatives from the Department of Social Services and the Attorney-General's Department for your time and for your evidence today. We look forward to receiving your answers to questions on notice and also your supplementary submission. That now concludes today's proceedings. The committee has agreed that answers to questions on notice will be returned by close of business on Thursday 22 July. I need a motion from a member of the committee to accept any tabled documents from the day's proceedings. Could someone move that motion.

**Senator SCARR:** I move that.

**CHAIR:** Thank you very much, Senator Scarr. That's carried. I again thank all witnesses for their evidence today. Thanks also to Hansard, Broadcasting and the secretariat. As you can see, we are working under a bit of duress. I am here in Geelong because of the issues with getting into Canberra. In fact, we're all attending remotely. Thank you so much again to everyone for their assistance.

**Committee adjourned at 17:01**