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Courts Administration Authority:
Submission to the Royal Commission into
Domestic, Family and Sexual Violence

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Acknowledgement of Country

The Courts Administration Authority (CAA) acknowledges and respects Aboriginal peoples as the State's First peoples and nations and recognise them as the traditional owners and occupants of land and waters in South Australia (SA).

The CAA further recognises the enduring and continued spiritual, social, cultural and economic practices of Aboriginal peoples, and how these practices are connected to their lands, waters and communities. We pay our respects to Aboriginal Elders past and present, and acknowledge the significant ongoing work of Aboriginal peoples to end domestic, family and sexual violence, including through the justice system.

Content warning and support information

This submission contains information and case studies that may be triggering to or cause distress for some readers. If you or anyone you know is experiencing or has experienced domestic, family or sexual violence, please contact the national 24-hour counselling service 1800RESPECT (1800 737 732) or the South Australian Domestic Violence Crisis Line on 1800 800 098. In an emergency, please phone 000.

A note on language

Aboriginal peoples

While this submission uses the term 'Aboriginal peoples', the CAA respectfully acknowledge that Torres Strait Islander peoples are First Nations peoples living in SA. Initiatives, services and outcomes relating to Aboriginal peoples should be read to include both Aboriginal and Torres Strait Islander peoples living in SA.

Domestic, family and sexual violence

Where possible, this submission predominantly uses the term 'domestic, family and sexual violence' (DFSV) to inclusively refer to abuse that occurs between current or former intimate partners and violence that occurs between family members. This term is used to align with the terminology of the South Australian Royal Commission into Domestic, Family and Sexual Violence (the Royal Commission), and the National Plan to End Violence Against Women and Children 2022-2032 (National Plan).

However, there are instances where terminology will be less consistent. This may include references where:

- The naming conventions of programs or initiatives do not align with this terminology e.g. 'Family Violence Court'.
- There are references to legislation or research with specifically defined terms e.g. 'domestic abuse', 'intimate partner violence' (IPV).
- The programs, initiatives or information provided only address a specific form or dynamic of DFSV, such as violence between current or former intimate partners, or sexual violence. In SA, sexual violence and domestic and family violence (DFV) responses are often provided by separate sectors.

Family Violence Court and Family Violence Lists

'Family Violence Court' and 'Family Violence Lists' are used interchangeably to refer to a court list which deals predominantly or, in some cases, solely with DFSV related matters. At some locations, a dedicated prosecutor is available and some DFSV support services are present in the courtroom. This occurs in the jurisdiction of the Magistrates Court.

Language regarding people experiencing DFSV and people perpetrating DFSV

In the courts, the terms 'victims' and 'perpetrators' of violence are not able to be used, apart from instances where it has been found, beyond a reasonable doubt, that DFSV related criminal offences have occurred.

This submission uses terms such as 'alleged victim' and 'alleged perpetrator'. This terminology is not used to invalidate a person's experiences of violence or avoid accountability for people using violence. It is to reflect the presumption of innocence as a fundamental principle of Australia's common law. In specific instances, the CAA will instead default to the court terminology used in specific proceedings.

In Intervention Order (IO) matters, the terms used include:

- **Applicant:** The person who brings an application for a DFSV related IO. This may be an alleged victim of violence or another party applying on their behalf, such as South Australian Police (SAPOL).
- **Respondent:** A person to whom there are grounds for issuing a DFSV related IO against.
- **Protected person:** A person for whose protection a DFSV related IO is issued. This may include the respondent's partner, ex-partner, accompanying children and/or other family members.

In criminal matters, the terms used include:

- **Complainant:** A party who has made a complaint of an offence. In this context, the term will refer to someone who has alleged to have suffered harm as a result of a DFSV related offence.
- **Defendant:** A party against whom a charge is brought in a proceeding. For this context, this term will refer to someone who has alleged to have caused harm in the context of a DFSV related matter.

The CAA acknowledges that, while this binary is used to provide clarity and understanding of these identities within an adversarial system, there are court users who will have both experienced and perpetrated violence separate to the proceedings underway. This is particularly relevant for young people engaged in the criminal jurisdiction of the Youth Court.¹

It is noted the section **Recovery and Healing** reverts to the terms 'victims' and 'perpetrators', as it contains information on processes that occur post-sentencing.

¹ Research suggests young people who experience child maltreatment are statistically more likely to engage in violent offending. For further information, see Malvaso, Catia G., Paul H. Delfabbro, Andrew Day, and Gavin Nobes. "The maltreatment-violence link: Exploring the role of maltreatment experiences and other individual and social risk factors among young people who offend." *Journal of Criminal Justice* 55 (2018): 35-45.

Youth

In the Youth Court, the term 'youth' is used to refer to a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, includes a person who was under the age of 18 years on the date of the alleged offence.² While efforts are made to ensure this term is used to refer to young offenders, they may also be referred to as defendants in cases where both adults and young people are implicated.

² This definition is taken from s 4 of the *Young Offenders Act 1993*.

List of Abbreviations

Abbreviation	Definition
+SHIFT	Positive Support and Healing Creates Innovative Forward Thinking
AI	Artificial Intelligence
AJO	Aboriginal Justice Officer
ALRM	Aboriginal Legal Rights Movement
AMC	Adelaide Magistrates Court
AOD	Alcohol and Other Drug Use
APP	Abuse Prevention Program
APY Lands	Anangu Pitjantjatjara Yankunytjatjara Lands
AVL	Audio-Visual Link
AYJO	Aboriginal Youth Justice Officer
CAA	Courts Administration Authority
CBP	Cross Borders Program
CIIO	Court Issued Intervention Order
Council	State Courts Administration Council
DCP	SA Department for Child Protection
DCS	SA Department for Correctional Services
DFV	Domestic And Family Violence
DFSV	Domestic, Family and Sexual Violence
DHS	SA Department of Human Services
ECMS	Electronic Case Management System
FASS	Family Advocacy and Support Service
Higher Courts	Collective referral to Supreme Court, District Court and Environment, Resources and Development Court
IO	Intervention Orders
IPV	Intimate Partner Violence
KIND program	Kinship, Improving Relationships, No Violence and Developing Skills
KODY	Kids First [Caring Dads] And Odyssey House
Kurlana Tapa	Kurlana Tapa Youth Justice Centre (Adelaide Youth Training Centre)
KWY	Kornar Winmil Yunti
LSC	Legal Services Commission
MBCP	Men's Behavioural Change Program
National Plan	National Plan to End Violence Against Women and Children 2022-2032
NJCA	National Judicial College Association
NOSPI	National Outcome Standards for Perpetrator Interventions
NPY Lands	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Lands
NSW	New South Wales
ODPP	Office of the Director of Public Prosecutions
PIIO	Police Interim Intervention Order
PTSH	Pre-Trial Special Hearing
R2R	Reset2Respect
RASA	Relationships Australia South Australia
SA	South Australia

Abbreviation	Definition
SAPOL	South Australia Police
SSWB	Sir Samuel Way Building
the Act	Courts Administration Act 1993
the Royal Commission	South Australian Royal Commission into Domestic, Family and Sexual Violence
TIC	Treatment Intervention Court
VIS	Victim Impact Statement
VWS	Vulnerable Witness Suites
WDVCAS	Women's Domestic Violence Court Assistance Service
WSCP	Women's Safety Contact Program
WSSSA	Women's Safety Services South Australia

Executive Summary

The Courts Administration Authority (CAA) supports the administration of justice on behalf of the people of South Australia (SA). The *Courts Administration Act 1993* (the Act) establishes the CAA as independent of the executive arm of government. The Act also requires the CAA to deliver functions within a fixed budget approved by the Attorney-General, and, as a result, there is limited ability for further court investment in domestic, family and sexual violence (DFSV).

The Supreme Court, District Court, Magistrates Court, Youth Court, and Coroners Court all committed to providing court support services that reflect DFSV best practice.

The CAA submission to the South Australian Royal Commission into Domestic, Family and Sexual Violence (the Royal Commission) identifies four focus areas that, with additional resourcing, would result in immediate improvements in responses to DFSV in SA:

- Expand timely, efficient, mandated intervention programs to enforce perpetrator accountability.
- Protect complainants, protected people and witnesses' safety, security and wellbeing through court infrastructure and design.
- Provide clear and accessible information to guide people through court processes.
- Upskill frontline staff and volunteers with specialist DFSV education and training.

Focus area 1: Expand timely, efficient, mandated intervention programs to enforce perpetrator accountability

The CAA should expand SA's unique court-mandated men's behavioural change programs (MBCPs). This would result in improved access to, participation in, and impact of targeted intervention programs.³

At various points in the justice system, alleged perpetrators of violence can be mandated to attend MBCPs without the prerequisite of pleading guilty to DFSV related charges. In SA, the Magistrates Court has the power to order an alleged perpetrator to be assessed for the Abuse Prevention Program (APP). Attendance can be mandated at a defendant's earliest point of connection with the justice system if it is made a condition of an interim Intervention Order (IO) or a condition of a court-ordered bail agreement. This program, which includes different streams provided by Relationships Australia South Australia (RASA) and Kornar

³ This focus area is explored within the section on 'Intervention Orders' under Early Intervention, the 'Court mandated programs' section under Response, and 'Trials, sentencing and other reconciliatory measures' under Recovery and Healing.

Winmil Yunti (KWY), is part of an interagency response model with the primary focus of enhancing and ensuring the ongoing safety and protection of women and their children.

The initiative is unique as it is accessible within weeks of an alleged perpetrator's first contact with the courts and can be mandated prior to a plea or sentencing. In other jurisdictions, criminal proceedings must be concluded before someone can be mandated to a MBCP. This can result in delays of months and, in extreme cases, years.

The ideal time period between a perpetrator being assessed and starting the APP is two to three weeks. Resourcing for this program has not kept pace with demand. Currently there is a six to eight week waiting period for alleged perpetrators of violence to be assessed for entry into the program by court staff. Further investment would reduce these waiting times and, in a best-case scenario, allow men to begin courses in around four weeks.

Expansion of the APP is a further opportunity to significantly increase engagement with MBCPs. Expansion would allow the program to better meet the needs of perpetrators from diverse cultures, communities, and circumstances, through the introduction of:

- Face-to-face programming for men living in regional areas.
- Tailored programs for men who are culturally and linguistically diverse, men with cognitive impairment and LGBTQIA+ people perpetrating violence against same gender or nonbinary partners or former partners.
- Initiatives that allow men to receive holistic treatment for substance misuse and/or gambling problems while enrolled in APP.
- Expanded access to 1:1 sessions for men who are unable to participate in group programming due to mental illness, cognitive impairment, language barriers and/or work commitments.
- Expansion of mandated programs to the Youth Court for young people using violence to provide a new and significant opportunity for early intervention.

A commitment to fund growing demand and expand accessibility of the CAA's APP, including by enabling contested matters to be fast-tracked, would improve the access and impact of SA's court-mandated MBCPs.

Focus area 2: Protect complainants, protected people and witnesses' safety and security through court infrastructure and design

Complainants, protected people and witnesses involved in DFSV matters should feel safe when participating in court processes. They should have the choice to be physically separated from the defendant/respondent in the court building and have

access to secure, trauma-informed spaces. SA's current court infrastructure does not facilitate this. This has a material and potentially devastating impact on the wellbeing of this cohort and justice outcomes.⁴

SA falls well behind States and Territories in providing safe and accessible infrastructure across all court jurisdictions. Despite the best efforts of court staff, complainants, protected people and witnesses are routinely exposed to defendants. This represents a major security risk and may cause additional stress, re-traumatisation and other severe impacts on their participation in proceedings. There have been occasions where this impact has been so severe that the victim withdrew from the court process, or a mistrial occurred.

The safety and accessibility of waiting areas in existing courtrooms is of paramount concern, particularly in regional areas. There is inadequate separation, privacy and protection available in court buildings. Complainants, protected people and witnesses do not have access to separate entrances or amenities and, have limited ability to avoid potential exposure to the defendant/respondent in common areas.

Further, SA has insufficient Vulnerable Witness Suites (VWS) available to ensure that all alleged victims of DFSV have the choice to give their evidence through audio-visual link (AVL). The few VWS that are available are retrofitted meeting rooms that do not meet the standard of trauma-informed spaces or facilitate a witnesses' full support system being accessible.

Adequate, built-for-purpose VWS should be available to South Australians, away from existing court facilities, to avoid their exposure to the defendant/respondent and potential re-traumatisation. Upgrades to existing facilities are also required to minimise these risks within existing court facilities.

A commitment to fund DFSV-informed infrastructure updates is required to deliver fit-for-purpose, trauma-informed and culturally safe spaces for court users impacted by DFSV and ensure their safety and wellbeing while navigating court processes.

Focus area 3: Provide clear and accessible information to guide people through court processes

Access to justice and compliance with court obligations requires court users to understand processes and the requirements placed upon them. Failure to comply with obligations directly impacts justice outcomes. However, navigating court

⁴ This focus area is explored in the section 'Safe and accessible Court infrastructure' under Prevention and in 'Current DFSV processes and initiatives' under Response.

processes can be challenging and stressful. Although comprehensive, current resources are often not easily accessible and require a significant level of English literacy to understand.⁵

For most court users, attending court will be one the most stressful experiences of their lives. Court processes are complex and difficult to navigate without access to assistance and information.

Further, complainants/applicants and respondents/defendants in DFSV matters will often be involved in multiple proceedings across multiple courts (including Family Court), especially when IOs are associated with criminal charges.

Applicants/protected persons and respondents appearing in DFSV related proceedings such as IO applications without legal representation is a significant barrier to justice and cost to the courts in terms of judicial time and court resources.

Current resources provided by the CAA and other services are comprehensive. However, they use language that is difficult to understand for someone with low English literacy skills and/or a cognitive impairment and are not often translated into languages other than English. Additionally, information is often provided as paper-based or digital content. Where information is available online, it is scattered across multiple websites and can be difficult to locate.⁶

The accessibility and use of DFSV relevant court information could be improved by investment in:

- Translated and easy read versions of written and digital resources where possible.
- Informational videos as an alternate form of providing legal information.
- Broadening access to specific DFSV materials across all courts and locations.
- Use of new technology to share information digitally e.g. QR codes.

⁵ This focus area is explored in the section 'Clear and accessible information to guide people through court processes' under Early Intervention.

⁶ This information may also conflict depending on the intended audience for the information.

Focus area 4: Upskill frontline staff and volunteers with specialist DFSV education and training

Requests for assistance by court users impacted by DFSV is increasing. The quality of service provided could be significantly upgraded, and the general court user experience improved, by providing specialist DFSV training to staff and volunteers.⁷

There is limited DFSV specific training and education available to frontline court staff and volunteers. Often court users impacted by DFSV are interacting with staff and volunteers who are not equipped to identify or appropriately support them. The provision of specialist DFSV education and training and upskilling of these frontline workers presents an opportunity to better support those involved in DFSV matters.⁸

Accessible and regular training for volunteers, court staff and registry services staff on recognising and responding to DFSV would deliver an increased awareness in how to identify DFSV, and what to do if an alleged victim or alleged perpetrator of violence presents and asks for assistance. This would improve the court experience and access to justice for DFSV court users.

Summary

The CAA's submission explores these four opportunities in greater detail. It is informed by examples and research into best practice DFSV court experiences and services. Its focus on investment is tied to the unique budgetary restrictions the CAA State Courts Administration Council (Council) is required to manage, as an independent body with strict obligations on our scope and expenditure.

The Courts and CAA are one part of an interdependent system, alongside agencies including but not limited to: SAPOL; Department for Correctional Services (DCS); Department for Child Protection (DCP); Department of Human Services (DHS); and the Office of the Director of Public Prosecutions (ODPP).

Policy, legislative reform or funding to assist one agency can have significant unintended consequences for the others, which in turn can significantly impact the successful implementation of these changes. **Widespread systemic reform to address DFSV must be supported by a robust justice pipeline funding model, to ensure the courts can meet additional demands and improve the chances of successful implementation.**

⁷ This focus area is explored in the section 'Early identification and referrals to services' under Early Intervention.

⁸ 'Specialist DFSV education and training' in this instance refers to training developed and provided by specialist DFSV organisations, such as Women's Safety Services SA.

Introduction

Role of the Courts Administration Authority (CAA)

The CAA supports the administration of justice on behalf of the people of SA. The *Courts Administration Act 1993* (the Act) establishes the CAA as independent of the executive arm of government. The Act also requires the CAA to deliver functions within a fixed budget approved by the Attorney-General, and as a result, there is limited ability for court investment in DFSV outside of the core functions of the CAA.

The State Courts Administration Council (the Council) is responsible for providing, or arranging the provision of, administrative facilities and services for participating courts that are necessary to enable those courts and their staff to properly carry out their judicial and administrative functions.

The participating courts are: Supreme Court, District Court, Environment, Resources and Development Court (collectively referred to as Higher Courts), Magistrates Court, Youth Court and Coroners Court.

The Council is assisted by the State Courts Administrator who is subject to control and direction by the Council and is responsible to the Council for the control and management of the Council's staff and the management of property that is under the Council's care.

Structure and function of SA Courts involved in DFSV matters

The Courts and CAA are one part of an interdependent system, alongside agencies including but not limited to: SAPOL; DCS; DCP; DHS; and the ODPP.

Policy or legislative reform pursued for the benefit of one agency can have significant unintended consequences for the others, which in turn can significantly impact the successful implementation of these changes. **Widespread systemic reform to address DFSV must be supported by a robust justice pipeline funding model, to ensure the courts can meet additional demands and improve the chances of successful implementation.**

Magistrates Court

The Magistrates Court of SA is established by the *Magistrates Court Act 1991*. It handles the greatest proportion of litigation in SA. All criminal matters begin in the Magistrates Court and the civil jurisdiction hears and determines approximately 80% of all disputes within in SA.

District Court

The District Court is established by the *District Court Act 1991* and is the principal trial court in SA. The Court has four jurisdictions: criminal; civil; administrative and disciplinary; and

criminal injuries. In its criminal jurisdiction, the District Court hears serious criminal matters other than murder and treason.

Supreme Court

The Supreme Court is the Superior Court of SA, established under the *Supreme Court Act 1935*. The Supreme Court is the only State court with jurisdiction over the judicial review of administrative decision making by government agencies. All murder charges are heard and determined in the Supreme Court as are the more complex civil matters.

By the *Supreme Court (Court of Appeal) Amendment Act 2019*, the *Supreme Court Act 1935* was amended so that the Supreme Court is now constituted of the General Division and the Court of Appeal. The Court of Appeal hears appeals from decisions of a Judge of the Supreme Court, District Court, Environment, Resources and Development Court, and Youth Court. It interprets and explains the law for the guidance of other courts.

Youth Court

The Youth Court was established under the *Youth Court Act 1993 (SA)* and hears matters in relation to criminal offending, child protection, youth treatment orders, adoption and surrogacy. It is made up of two branches – the Court (including the Registry) and the Conferencing Unit. The Court is presided over by the Judge of the Youth Court and the two branches are administered by the Registrar of the Youth Court.

Coroners Court

The *Coroners Act 2003* provides for the State Coroner to investigate the causes and circumstances of reportable deaths and to make findings as to causes of death where no inquest is held.

The Coroners Court conducts inquests to determine the causes and circumstances of deaths where an inquest is mandatory, or if the State Coroner decides that an inquest is necessary or desirable. This usually occurs if the circumstances involve matters of substantial public importance, particularly if relating to public health or safety. The Court may also make recommendations aimed at preventing deaths in similar circumstances.

Prevention

Safe and accessible court infrastructure

The provision of accessible and safe infrastructure is crucial in providing an appropriate space for alleged victims, protected persons and witnesses to provide their best evidence.⁹

Current responses

In newer and purpose-built court buildings, their design and greater availability of waiting areas has greatly aided in efforts to keep defendants/respondents and protected persons/complainants separate when attending court. The Magistrates Court at Port Augusta, built in 2007 as the first Australian courthouse designed predominantly for Aboriginal and Torres Strait Islander users, has ample outside waiting areas and two waiting areas within the building itself.¹⁰ The design is spacious, and provides court users with opportunities to discretely take breaks in trauma-informed settings.

For courts located in older buildings, the ability of parties to remain separate is dependent on the awareness of court staff, and their availability to enforce that separation. This is more straightforward in larger courts. It is often less achievable in smaller court buildings with less or no access to these facilities.

As an example, the Mount Barker courthouse is a State Heritage Place built in 1865 and has not received meaningful upgrades to better reflect the needs of the court and court users. The single waiting room for this court is compact and, in cases where parties are required to remain separate, it can result in one party needing to wait outside. Further information on the age of court assets is provided in Appendix 1. Information on the number of courtrooms for each jurisdiction is provided in Appendix 2.

Under the *Evidence Act 1929* s13(a) there are special provisions which the court can use to protect vulnerable witnesses who are giving evidence in criminal proceedings from further distress and embarrassment. The legal definition of a vulnerable witness in the *Evidence Act*

⁹ It is well-established in research literature that attending a court for a DFSV matter carries a significant risk of re-traumatisation for people with experiences of violence, including by placing them in the same physical location of the defendant and causing them to relive a traumatic incident in a public setting. This in turn may reduce a victim's ability to provide coherent evidence and increase the likelihood that they withdraw legal proceedings altogether. For further information, see Cossins, Annie and Emma Rowden. 2022. "The child sexual assault trial: Reconceptualising the design of court spaces according to trauma-informed principles". In *Courthouse Architecture, Design and Social Justice*, by Kirsty Duncanson and Emma Henderson, 140-166. Abingdon: Routledge.

¹⁰ Murphy, Julian R, Elizabeth Grant, and Thalia Anthony. 2022. "Indigenous Courthouse and Courtroom Design in Australia." In *Courthouse Architecture, Design and Social Justice*, by Kirsty Duncanson and Emma Henderson, 75-106. Abingdon: Routledge.p.89

1929 and the provisions available to vulnerable witnesses under this legislation are provided in Appendix 3.

In broad terms, available measures include:

- evidence be given outside the court and transmitted by means of audio-visual link (AVL);¹¹
- an audio-visual recording of the evidence be made and replayed in the court;
- a screen, partition or one-way glass be placed to obscure the view of a party to whom the evidence relates or some other person;
- the defendant be excluded from the place where the evidence is taken;
- that the witness be accompanied by a relative, friend or other person, or by a canine court companion, for the purpose of providing emotional support;
- if the witness has a physical disability or cognitive impairment—that the evidence be taken in a particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress;
- that, while the evidence is being taken, the judge and any lawyer present in the court does not wear a wig or gown (or both); and
- making an application for the court to be closed.¹²

Existing efforts to improve the court environment for alleged victims of DFSV include the use of VWS and physical privacy screens when giving evidence. All major courts apart from the Coroners Court are equipped with at least one VWS, which are prioritised to be utilised by witnesses or complainants who require the safety of being in a different room to the defendant.

VWS allow witnesses to provide evidence via AVL from a separate room, without needing to see the defendant during the trial. Currently, there are 17 fixed equipment rooms used for vulnerable witnesses to provide AVL evidence across all courts.

¹¹ This is different wording to what is contained within the *Evidence Act 1929*, which refers to 'closed-circuit television (CCTV)'. The term CCTV is not commonly used in the courts, due to improvements in technology since the amendment was made. The courts now only use video conferencing technology that supports AVL.

¹² An order that the court be closed may be made pursuant to s 13A, s 67F or s 69 of the *Evidence Act 1929* which means the public are excluded from the sittings of the court. The complainant can make an application, and a judicial officer will make the determination whether the application and circumstances meet the test for closing the court.

For witnesses who wish to appear in the courtroom or who do not have access to a VWS, privacy screens can be used. Privacy screens are equipped with one-way glass so the witness can provide their evidence without seeing the defendant.

Currently, in the Higher Courts, there are 10 mobile privacy screens available within criminal courtrooms that can be slotted into place against the defendant dock. Three courts have access to screens that utilise technology to obscure the defendant from the witness' view. The Youth Court has access to one privacy screen. A limited number of privacy screens are available at Magistrates Court locations, including one in the Adelaide Magistrates Court (AMC).

Gaps and opportunities

Limitations to court infrastructure, both within and outside the courtroom, means there is not currently a default provision of safety for people impacted by DFSV across all facilities. Instead, the safety of court users relies on active consideration and efforts by court staff and the judiciary to keep people involved in DFSV matters separate, and to apply protective measures as necessary. This creates significant extra burdens for staff and the judiciary and heightens the risk of the complainant being exposed to the defendant.

In most SA courts, waiting areas are in open spaces and usually consist of public seating located outside of a courtroom. In regional courts, there is usually only one designated small waiting area accessed by a single-entry point. For example, at the Magistrates Court at Whyalla, the Registry counter area is separate to where Sheriff's Officers are located when the court is sitting, meaning at times defendants/respondents may be in close proximity to the complainant and/or applicants without a significant oversight from security.

In the Coroners Court, expansion of its staffing has necessitated turning rooms that were previously for families of deceased victims into office spaces. Due to this lack of dedicated space, meetings with families are increasingly being held in public-facing waiting areas or within the courtroom itself. This has greatly reduced the comfort and safety of families, at a time when they are likely to be experiencing significant grief and emotional distress.

In instances where a person potentially impacted by DFSV is waiting to give evidence in a trial at the District Court and is not accessing a VWS, they will likely be sharing the space with the defendant and/or their family, friends and supporters. A case study provided in Appendix 4 illustrates the impact this can have on a complainant's ability to participate in a trial and provide coherent evidence.

Many of these issues can only be resolved through the expansion of existing court infrastructure, including through building new facilities. Upgrades to older court

buildings and courtrooms to improve the safety and accessibility of their waiting areas are of paramount concern, especially for courts outside the metropolitan area, the Coroners Court and the Youth Court.

Where VWS are used the witness giving evidence may still be exposed to the defendant. VWS are located on court premises, and witnesses must travel through public spaces to access the suite and to use toilet and kitchen facilities in common areas.¹³ Smaller courts, such as the Youth Court, have VWS proximate to the waiting areas with implications for the comfort and privacy of people providing evidence.

As illustrated in the case study provided in Appendix 5, defendants may wait outside a court building on the date a complainant is using a VWS to give evidence having the effect of further intimidating them. The establishment of purpose-built VWS located in a non-court building and at a distance to the existing courts could mitigate this risk.

Additionally, the VWS currently in use are not purpose-built and require improvements to provide trauma-informed and culturally safe settings for alleged victims of violence and/or witnesses. Out of the 17 VWS available across the courts, only four were purposely rebuilt or fitted for this purpose.¹⁴

An internal review of VWS conducted in July 2024 resulted in the following suggestions for their improvement:

- Further soundproofing of the VWS.
- Improved lighting to provide a calming atmosphere.
- Larger VWS to accommodate support persons sitting with the witness/defendant.

The July 2024 review also produced the following recommendations regarding the use of privacy screens:

- Increased number of privacy screens to ensure they are available for vulnerable witnesses who are not able to access a VWS to provide evidence remotely, or in instances where a mobile AVL unit is not available.
- Improved privacy screens that protect the witness from seeing the defendant, but do not impinge on the judicial officer's view of the witness.

¹³ Generally, VWS do not have access to separate amenities, especially in older court buildings. In addition, only the suites located in the Supreme Court Building have separate, dedicated waiting areas for family and support people. In other courts, most rooms are located immediately adjacent to public spaces, and some are only separated from public view by frosted glass.

¹⁴ This data was produced through an internal review of the VWS conducted by the Principal Registrar and Director Higher Courts and the Principal Registrar and Director Court Services, which took place in July 2024.

The experience of witnesses involved in DFSV matters would be greatly improved by investment in:

- **a purpose-built VWS hub located away from existing court buildings to minimise all harms associated with coming into contact with a defendant and provide an opportunity to build fit-for-purpose, trauma-informed and culturally safe suites.**
- **expansion and upgrade of current court infrastructure to ensure further availability of VWS and to increase their suitability, especially in locations outside of the CBD.**

Clear and accessible information to guide people through court processes

Courts, for most users, are complex environments that are difficult to navigate without access to assistance.

People involved in IO matters and/or criminal matters related to DFSV should have access to transparent, specific and useful information, available in formats that they can easily understand, and be directed to other assistance or information as needed.

Information needs of court users in a DFSV context include:

- Information that increases a person's understanding of court processes and outcomes.
- Information that indicates the availability of other supports, including those provided by external services.

Current responses

There are numerous ways information and support are provided to defendants and alleged victims in DFSV matters who are attending court.

Legal assistance services, including for DFSV related matters, are provided onsite at all metropolitan courts, including suburban courts. For example, the AMC has office spaces for workers from the Aboriginal Legal Rights Movement (ALRM) and the Legal Services Commission (LSC). It is noted that during IO proceedings conducted in the Magistrates Court, defendants/respondents are encouraged to apply for legal aid and engage legal assistance if they appear unrepresented in situations where they have related criminal charges (including for breaching the IO). In general terms, a respondent to an IO will not be eligible for legal aid if there is not a related criminal charge.

There are some DFSV specific supports available onsite at some courts through external organisations. The LSC's Women's Domestic Violence Court Assistance Service (WDVCAS) provides legal assistance to apply for, vary, or revoke an IO, reporting IO breaches to police,

and related tenancy matters. They are not able to provide legal assistance to alleged victims of violence beyond these matters.

Through the ODP, complainants impacted by DFSV may be able to access Witness Assistance Officers who can provide information and referrals to alleged victims and their families.

There is also a general CAA Court Volunteer Service available to court users in the Magistrates Court at Adelaide, Christies Beach, Elizabeth and Port Adelaide as well as in the Sir Samuel Way Building (SSWB). Volunteers are available to assist any court user, no matter what their role in the court process for practical matters, such as navigating the building. In the suburban courts and SSWB, this volunteer service is only available until midday.

For Aboriginal court users there are six Aboriginal Justice Officers (AJOs) based at Adelaide, Elizabeth, Port Adelaide and Port Augusta locations. They also attend some circuit courts within the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, Berri, Ceduna, Coober Pedy, Kadina, Maitland, Murray Bridge, Port Lincoln, Port Pirie and Yalata. The role of AJOs includes, but is not limited to:

- Providing advice and assistance to Aboriginal court users about court procedures and court applications.
- Assisting Aboriginal court users to understand court outcomes.
- Supporting complainants and defendants, including by facilitating referrals to other agencies.

Additionally, Aboriginal Youth Justice Officers (AYJOs) are situated in the Youth Court Registry. The AYJOs are responsible for the development, delivery, monitoring and review of culturally sensitive services to Aboriginal youth, families and community.

In the Coroners Court, families of the deceased persons are provided with access to social workers. These social workers facilitate contact with the Coroners Court and provide updates on the progress of coronial proceedings on a limited basis.

General information about navigating the SA court system, including more specific information on DFSV matters such as IOs, is provided on the CAA website. This includes items such as:

- Information to support self-represented litigants.
- Guidance on what to expect when attending courts, and the processes involved in specific matters.

- Records of court decisions, such as judgements, sentencing remarks and findings.¹⁵
- Access to Court Rules and Court Forms.

The CAA website also provides links to resources on other websites, such as information provided by Victims Support Services, and the LSC's [Law Handbook](#).

[Victims of Crime South Australia](#) has simplified information on court processes, including topics such as:

- Court support;
- Witnesses and giving evidence;
- Dealing with the media;
- Victim Impact Statements; and
- Sentencing and appeals.

Further specialist legal advice for alleged victims of DFSV is offered by external organisations such as Women's Legal Services and WDVCS.

Pamphlets and posters for legal assistance services are displayed in most court buildings.

Gaps and opportunities

The National Domestic and Family Violence Bench Book identifies a lack of information about court processes and options, as well as limited access to support, as a common experience that impact alleged victims of violence.¹⁶ Defendants/respondents in DFSV matters are similarly impacted by a lack of information and assistance to understand court processes and outcomes.¹⁷

As DFSV matters can be complex, there is a likelihood that alleged victims and defendants will be involved in multiple proceedings across multiple courts.¹⁸ Responses to these matters, such as IOs and related criminal charges, are addressed together in the

¹⁵ It is noted these records are not provided across all court jurisdictions.

¹⁶ Australasian Institute of Judicial Administration and Attorney-General's Department (Commonwealth). 2023. "Legal representation and self represented litigants." National Domestic and Family Violence Bench Book. June. Accessed October 19, 2024. <https://dfvbenchbook.aija.org.au/fair-hearing-and-safety/legal-representation-and-self-represented-litigants/>.

¹⁷ A 2021 Queensland study found that alleged defendants' comprehension of their order conditions, especially when they intersect with other experiences of social disadvantage and complex needs, are key factors influencing compliance. For further information, please see Meyer, Silke, and Rose Stambe. "Increasing compliance with domestic violence protection orders: investing in defendant education and support as an investment in victim and family safety." *Policing and society* 32, no. 9 (2022): 1071-1086.

¹⁸ It was noted in the 2016 Victorian Royal Commission into Family Violence that DFSV proceedings are often accompanied by a mixture of criminal, civil, crime compensation, family law and other matters at the same time. For further information, see Royal Commission into Family Violence. 2016. *Royal Commission into Family Violence: final report*. Melbourne, Victoria: Royal Commission into Family Violence.p158.

Magistrates Court.¹⁹ However, criminal proceedings for major indictable criminal offences will usually be dealt with separately to IO proceedings.

Applicants/protected persons and respondents appearing in DFSV related proceedings such as IO applications without adequate legal representation is a significant barrier to justice and cost to the courts in terms of judicial time and court resources.^{20 21} Access to justice for this cohort depends significantly on their ability to engage in self-help,²² which for adults and children who experience DFSV may be particularly compromised due to the impact of trauma on their cognitive functioning.^{23 24}

Information needs to be provided in digital as well as physical format as it may be unsafe to provide alleged victims of violence physical information due to the risk of it being discovered by the defendant. This digital information should include providing access to websites that include a 'Quick Exit' function and links to additional advice on online safety, including on how to clear web browser history.²⁵

Currently in SA, there is no central online location where all information relevant to DFSV matters can be accessed. In addition, many materials provided are not adapted for those with low English literacy and/or cognitive impairment.²⁶

¹⁹ Further information is provided on this initiative in the Response section.

²⁰ Australasian Institute of Judicial Administration and Attorney-General's Department (Commonwealth). 2023. "Legal representation and self-represented litigants." National Domestic and Family Violence Bench Book. June. Accessed October 19, 2024. <https://dfvbenchbook.aija.org.au/fair-hearing-and-safety/legal-representation-and-self-represented-litigants/>.

²¹ This is mostly attributed to factors such as the cost of engaging private lawyers or lack of access to legal assistance. For example, in SA, a person's assets may affect their eligibility for legal aid even in instances where their weekly disposable income is well below the threshold for eligibility. Please see [Funding Criteria - Legal Services Commission of SA \(lsc.sa.gov.au\)](https://www.lsc.sa.gov.au/funding-criteria) for further detail.

²² Australian research demonstrates that people with less formal education, people who did not speak English as a first language, and people living in regional and remote areas are significantly less likely to use legal self-help resources. For further detail, please see McDonald, Hugh M., Suzie Forell, and Zhigang Wei. "Uptake of legal self-help resources: What works, for whom and for what?-" *Justice Issues* 30 (2019), p.3.

²³ Daugherty, Julia C., Miguel Pérez-García, Natalia Hidalgo-Ruzzante, and Natalia Bueso-Izquierdo. "Perceived Executive Functioning among Female Survivors of Intimate Partner Violence." *Journal of Aggression, Maltreatment & Trauma* 30, no. 1 (2021): 25-42.

²⁴ Savopoulos, Priscilla, Christina Bryant, Alison Fogarty, Laura J. Conway, Kelly M. Fitzpatrick, Patrick Condon, and Rebecca Giallo. "Intimate partner violence and child and adolescent cognitive development: A systematic review." *Trauma, Violence, & Abuse* 24, no. 3 (2023): 1882-1907.

²⁵ For further information on the purpose and use of quick exit buttons, please visit: <https://wesnet.org.au/exit/>

²⁶ In South Australia, according to 2021 Census data from the Australian Bureau of Statistics, 7.6% of South Australians aged 15 years and over have a level of educational attainment equivalent to Year 9 or below, and almost 1% of respondents recorded no educational attainment. Additionally, 19.0% of households use a non-English language at home.

The accessibility, safety and use of information could be improved by investment in:

- **Translated and easy read versions of written and digital resources where possible.**
- **Informational videos as an alternate form of providing legal information.**
- **Broadening access to specific DFSV materials across all courts and locations.**
- **Use of new technology to share information digitally e.g. QR codes**

Coronial recommendations

The Coroners Court, through conducting inquests, has significant power to make recommendations that prevent further deaths due to DFSV. While a Coroner is unable to make any finding or suggestion of criminal or civil liability, they can make recommendations to government of actions that can be taken to prevent or reduce the likelihood of a similar event.

Importantly, these actions necessitate government involvement as there are reporting requirements for any recommendations made by a Coroner.²⁷ The relevant Minister (or if there is no relevant Minister, the SA Attorney-General) must, within a set time period after receipt of an inquest recommendation, cause a report to be laid before each house of Parliament. This report provides details of any action taken or proposed to be taken in response to the recommendation, or, in the case that no action has been taken or will be taken by the government, the report will provide reasons for this determination.²⁸

Current responses

Between May 2011 and October 2024, there have been over 283 reviews conducted and 15 Coronial Inquests with a domestic violence context in SA. A total of 45 recommendations relating to these inquests have been released. A list of all 15 DFSV inquests completed is provided in Appendix 6.

A case study that particularly demonstrates the use of coronial recommendations to advance systems reform is the Zahra Abrahamzadeh Inquest.²⁹ Among other reforms, the recommendations of this inquest resulted in the establishment of the Multi Agency Protection Service to enhance information sharing between agencies involved in DFSV matters.³⁰

²⁷ Legal Services Commission South Australia. n.d. "Coroners Inquests." SA Law Handbook. Accessed October 19, 2023. <https://www.lawhandbook.sa.gov.au/ch36s03s03.php>.

²⁸ Ibid.

²⁹ *Inquest into the Death of Zahra Abrahamzadeh* (Coroners Court of South Australia, State Coroner Johns, 21 June 213).

³⁰ Government of South Australia. 2014. Taking a Stand: Responding to Domestic Violence. Policy Document, Adelaide: Government of South Australia. <https://www.dpc.sa.gov.au/documents/rendition/B18111>

Gaps and opportunities

Inquests, while a vital opportunity for reform, are slow-moving processes. Generally, inquest hearings take between three to five years to resolve. This pace reflects factors that are outside of the control of the courts, such as the time required to produce a final postmortem report (12 to 15 months), to resolve police investigations, and to resolve any subsequent criminal proceedings. However, there are opportunities to increase the efficiency of the Coroners Court more generally. This would require efforts to expand infrastructure, support further staffing and pursue technological innovations that improve the current combined process of paper-based and electronic record management.

Early Intervention

Intervention Orders (IOs)

Police Interim Intervention Orders (PIIO) or Court Issued Intervention Orders (CIIO)³¹ are the most common entry point of people experiencing and perpetrating DFSV into the SA court system. For defendants, an IO may also represent the first time they come into view of the justice system and are challenged on their alleged use of violence. Further, IOs encourage compliance as a breach of an order is a criminal offence and carries a risk of further penalties.³² Additionally, IO proceedings are an opportunity to either mandate or encourage men using violence to engage in MBCPs to address their use of violence.³³

Current responses

Under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, a PIIO can be issued against a defendant if:

- a) it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person; and,
- b) the issuing of the order is appropriate in the circumstances.³⁴

Generally, SAPOL will assess all contact they have had with DFSV matters to decide whether an IO is necessary.

If a PIIO is considered necessary and served on a defendant, the police officer who issued the PIIO is considered to have made an application to the Magistrates Court for an IO, and the defendant is considered to have been summoned to appear before the court for the hearing of the application.³⁵ The court can decide to confirm, substitute or revoke the PIIO, including in the absence of a defendant if they fail to appear at the hearing.

Under s21(7) of the *Intervention Orders (Prevention of Abuse) Act 2009*, the defendant must appear before the court within eight days after the date of an interim IO being issued by the court or, if the court will not be sitting at the place within that period, within two days after the court next commences sitting.

³¹ The term 'Court Issued Intervention Order' (CIIO) is used as an umbrella term in this instance to refer to IOs that are distinct to PIIOs. This term is not used within the courts and is included in this submission to provide further clarity and avoid confusion.

³² Mackay, Erin, Althea Gibson, Huette Lam, and David Beecham. *Defendant Interventions in Australia: Part Two: Defendant Pathways and Mapping*. Australia's National Research Organisation for Women's Safety, 2015, p.3

³³ Mackay, Erin, Althea Gibson, Huette Lam, and David Beecham. *Defendant Interventions in Australia: Part One: Literature Review*. Australia's National Research Organisation for Women's Safety, 2015, p.3.

³⁴ Mackay, Gibson, Lam & Beecham 2015, *Defendant Interventions in Australia Part Two*, p.18.

³⁵ Ibid.

Alleged victims of violence can also make their own application to the Magistrates Court for a CIIO under s20 of the *Intervention Orders (Prevention of Abuse) Act 2009*. A representative of the person may also apply for a CIIO on behalf of the alleged victim, which may include a police officer in some circumstances.

For private IO applications, the court will hold a preliminary hearing after the application is lodged, without summoning the defendant to appear.³⁶ At the time of this initial hearing, the respondent of an IO will generally not be aware the matter has been listed and the applicant is required to give sworn evidence relating to their application. At the hearing, the court may issue an interim IO or dismiss the application. If an interim IO is made the respondent will then be served with the interim IO by SAPOL and summonsed to the next hearing where a final IO may be made.

Both PIIOs and CIIOs only come into force when served on the respondent/defendant either personally, in some other manner authorised by the court, or if the respondent/defendant is present in court when the order is made.³⁷

Data on DFSV related IO applications, IOs issued and total breaches found proved for the 2021-24 financial years are provided in Appendix 7.

Referrals to the APP can be ordered by the Magistrate as part of an IO.³⁸ Ideally, these referrals take place at the defendant's first appearance for the interim IO. Under s21(7) of the *Intervention Orders (Prevention of Abuse) Act 2009*, the defendant must appear before the court within eight days after the date of the order or, if the court will not be sitting at the place within that period, within two days after the court's next sitting commences.

In the Youth Court, applications for IOs are usually brought in conjunction with a substantive charge, such as assault or property damage. Over the past four years, 579 IO lodgements were made in the Youth Court, including 122 in the last financial year. The most common charges accompanying the IO in descending order were aggravated assault, damage building or motor vehicle, aggravated assault against own child or spouse, damage property not being a building or motor vehicle, and aggravated assault causing harm.

Increasingly, matters involving familial IOs, assaults and property damage offences are being referred to an IO mediation conducted by the Conferencing Unit of the Youth Court. The Youth Court, under s12(b) of the *Sentencing Act 2017*, can refer DFSV related IOs to mediation. These matters often involve a youth charged with offences against family

³⁶ Mackay, Gibson, Lam & Beecham 2015, *Defendant Interventions in Australia Part Two*, p18.

³⁷ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s8 and s8(a).

³⁸ For further information on these programs, please view the section on Response.

members continuing to reside in the family home with the protected persons named in the IO. The Youth Court's mediation model for IOs commenced in 2023.

The coordinators from the Conferencing Unit undertake extensive assessments to ensure matters being mediated are suitable and do not pose any additional risks to the victim. In these familial matters the parties are often invested in relationship reparation, particularly when residing in the same home. Often the outcomes of an IO mediation are an agreement as to acceptable behaviour and for the youth to attend counselling or other programs. The IO mediation does not divert the matter from court proceedings, as the outcome from the mediation will be considered by the court at the next hearing.

Gaps and opportunities

People who apply for private IOs alleging domestic abuse will often not receive the same level of support from SAPOL as those who are subject to PIIOs, as the matters related to the private application may not have ever come to SAPOL's attention. There are also instances where alleged DFSV may have come to the attention of SAPOL, but not met the threshold required for a response as per their policy. It is noted that on a number of occasions, private IO applications lodged with the court have been referred to SAPOL due to significant risk and safety concerns. Resourcing to increase the presence of specialist legal services across more courtrooms and locations for private IO lists may provide an additional avenue for referrals of applicants/victims to their services and assistance.³⁹

IOs are a critical juncture for defendants/respondents to be referred into the APP as early as possible, due to the short timeframe between the issuing of an IO and their first appearance in court. It is an opportunity to order defendants into a MBCP prior to any criminal charges being issued, and to ensure they are being monitored and kept in view without the requirement of pleading guilty and being sentenced. In addition to this, while men are participating on the program, the protected person is offered support by the Women's Safety Contact Program (WSCP) provided by the Women's Safety Services SA (WSSSA).

As the referral of a respondent/defendant to the APP is what triggers contact between WSCP and the protected person, at times the respondent/defendant is required to provide the protected person's contact details to support this referral. This can result in circumstances where a protected person is unable to access WSCP's support due to a defendant/respondent's refusal to participate in the APP, or because the defendant/respondent has deliberately delayed or refused to provide contact details. Where

³⁹ It is noted that both WDVACAS and WLS usually have a presence in courtrooms within the AMC and suburban Magistrates courts.

possible, referrals of protect persons to WSCP should happen independently without reliance on the respondent/defendant's cooperation.

In instances where a respondent/defendant is found not suitable for APP participation, there is a gap in services offered to the protected person. It is noted there may be other ways to connect protected persons with specialist DFSV services, including by proactively directing them to appropriate information while they are involved in IO proceedings.

It is noted the APP is only available to men who are allegedly perpetrating violence against their current or former female partner(s).⁴⁰ Noting this, there is a gap in that no referrals to a court-mandated program are available to:

- men who are alleged to have used violence against children, siblings and parents;
- women who are alleged to use violence against current or former male partner(s), children, siblings or parents; and
- people in same-gender relationships or who are in relationships with nonbinary people.⁴¹

There is currently a six to eight week waiting period for defendants to be assessed for entry into the program. The impact of these delays is demonstrated in the case study presented at Appendix 8.

Resourcing to support additional staffing of the APP would reduce the time to assessment and could see men attending a program within four to six weeks from their first court appearance compared to the current 10-12 week waiting period.

Regarding IOs in the Youth Court, the mediation process provides an opportunity for young people to take responsibility for their behaviour and repair their familial relationships.

Resourcing to expand the capacity of the Youth Court to undertake these mediation processes would be of significant benefit of this cohort.

Early identification and referrals to services

The Magistrates and Youth Courts environments present an opportunity to proactively identify people who could be experiencing DFSV and refer them to services, as an IO is

⁴⁰ Broadly, this reflects an evidenced understanding that DFSV is predominantly perpetrated by men against women and children. For example, the 2021-22 Australian Bureau of Statistics Personal Safety Survey established that more people had experienced violence by a male defendant (38% or 7.5 million people aged 18 years and over) than by a female defendant (11% or 2.2 million).

⁴¹ The term 'same gender' instead of 'same sex' to be inclusive of same-gender partnerships involving transgender people.

often the first time that many people impacted by DFSV will have sought formal support.⁴² A young person's contact with the justice system is a critical time to intervene early in their use of DFSV against family members and/or intimate partners and disrupt cycles of intergenerational trauma.⁴³

Education and training to support early identification and support

According to the National Domestic and Family Violence Bench Book, 'where a victim is a party to DFV related proceedings, their experience of court processes is likely to be improved where the judicial officer has a good understanding of domestic and family violence'.⁴⁴ Similarly, the 2017-21 evaluation of Queensland's Southport Specialist Domestic and Family Violence Court noted 'the importance of all staff having a nuanced understanding of domestic and family violence'.⁴⁵ This improved understanding is best supported by DFSV specific education and training, both for the judiciary and all customer-facing staff and volunteers.

Current responses

Judicial officers in the SA court system have some access to education and training opportunities to improve their understanding of DFSV. The most formalised training is delivered by the National Judicial College Association (NJCA). A specialist DFSV committee is chaired by Magistrate Pandya (the current Regional Manager at Port Adelaide) and their training is delivered in several States. Although this training is not mandatory, the Chief Magistrate of the Magistrates Court of South Australia strongly encourages all Magistrates to attend this training at some point in their tenure. The NJCA training is available to all members of the judiciary.

⁴² Meyer, Silke. "Seeking help for intimate partner violence: Victims' experiences when approaching the criminal justice system for IPV-related support and protection in an Australian jurisdiction." *Feminist criminology* 6, no. 4 (2011): 268-290.

⁴³ A recent national study examining the prevalence impact of Adolescent Family Violence in the Home found that one in five participants (20%, n=1,006) had ever used violence against a family member, and of this proportion, 55% had been abusive towards family members on an episodic basis. The study further found that the probability of using violence in the home was highest for young people who had experienced child abuse and witnessed violence between family members (46% of the study sample). Research has further established child abuse and adolescent IPV are significant predictor of adult victimisation and perpetration of DFSV. For further information, see Fitz-Gibbon, Kate, Silke Meyer, Hayley Boxall, Jane Maree Maher, and Steven Roberts. 2022. *Adolescent family violence in Australia: A national study of prevalence, history of childhood victimisation and impacts*. (Research report, 15/2022). ANROWS, p11.

⁴⁴ Australasian Institute of Judicial Administration and Attorney-General's Department (Commonwealth). 2023. "Legal representation and self-represented litigants." National Domestic and Family Violence Bench Book.

⁴⁵ ARTD Consultants. 2021. Southport Specialist Domestic and Family Violence Court - Process and Outcomes Evaluation 2017-21. Evaluation Report, Southport: Queensland Department of Justice and Attorney-General, p.iv.

The program includes information on the causes, levers and triggers of DFV, coercive control, and practical advice on the application of the National Domestic and Family Violence Bench Book.

Magistrates are also provided with the opportunity to attend regular Family Violence List Forums. These forums provide the opportunity for Magistrates to stay up to date on recent legislative and rule changes, relevant common law decisions, and to informally discuss practice matters.

Targeted training for DFSV is available to judicial officers in the Higher Courts on a much more limited basis. Recently, a Commonwealth funded initiative to deliver judicial training on sexual violence was provided in Adelaide. This training had high attendance from judicial officers within the Higher Courts.

The Youth Court has a Judicial Education Program with approximately seven sessions scheduled per year. Previous presenters have had a background in psychology, forensic paediatrics, medicine, university research and advocacy for youth and children.⁴⁶

DFSV is also a regular item for Judicial Development for Magistrates and All Court Judicial Development Day agendas. These professional development opportunities occur on a regular basis, including multiple times a year in the Magistrates Court and once a year in the Supreme Court. More recent sessions have focused on topics such as IOs, MBCPs and family violence law updates.

Sheriff's Officers in the courts undertake two weeks of Operational Safety Training and two weeks of In-Court Support Training upon their employment. They do not receive specific training on DFSV. However, guest speakers from court intervention programs, including APP staff, deliver information sessions at the AMC as part of the two-week In Court Support Training.

Staff members of the APP attend training on working with men who perpetrate violence, provided by non-government organisations such as WSSSA and No to Violence. They may also attend additional DFSV training delivered by WSSSA.

⁴⁶ The session topics have included vicarious trauma and compassion fatigue, working with Aboriginal peoples, child parenting and early intervention services, the iceberg model, alcohol and other drug treatment pathways for youth, engaging with children who have experienced trauma, cultural awareness in child protection, early intervention before removal in Child Protection and brain injury and trauma.

Other court staff are currently only provided one online module of training on 'Domestic Violence in the Workplace'. It is internally focused and designed to increase awareness of domestic violence and its impact in the workplace. The module aims to:

- Provide an overview of what domestic violence is.
- Increase awareness and sensitivity for workers who may be victims of domestic violence.
- Build management capability to address domestic violence issues which may be having an impact in the workplace.
- Provide information about roles and responsibilities for managing business operations while also enabling managers and leaders to support workers health and safety.
- Build confidence for managers and leaders to engage in discussion with workers who may be victims of domestic violence and what options may be available.

The training is not mandatory and correspondingly, has a low completion rate across the organisation.

Gaps and opportunities

Court staff and volunteers require education and training to improve their ability to recognise and respond to DFSV. Anecdotally, court volunteers in the AMC noted they are seeing increases in protected persons and complainants in DFSV matters asking them for assistance while in a state of distress. Where appropriate, court staff and volunteers should be supported to confidently and discretely provide referrals and access to information to people who approach them for DFSV related inquiries.

To provide this assistance, the courts require additional resourcing to support mandatory and ongoing training on recognising and responding to DFSV for volunteers, court staff and registry staff. This funding is required to support development of the training itself, and to ensure backfill is available to cover frontline staff while they are engaged in training sessions.

While Magistrates have opportunities to engage in DFV specific training on an ongoing basis, there are fewer opportunities for judicial officers in the Higher Courts to participate in specialised training beyond information imparted at All Court Judicial Development Days. The resourcing of local, high-quality judicial training on DFSV would likely see significant uptake and strengthen and maintain an informed judicial understanding of DFV, its drivers, and its presentation.⁴⁷

⁴⁷ For example, the Judicial Commission of NSW offers an extensive education program for judicial officers, ranging from annual conferences, induction and orientation courses for new appointees to

It is noted that for all judicial officers, training is usually undertaken at the expense of the courts and requires travel, which in turn reduces their availability for listings and other core work.

Risk assessment and referrals

Identifying opportunities to intervene earlier with people impacted by DFSV is best supported through awareness and management of risk, and the proactive offering of service referrals.⁴⁸

Current responses

The Magistrates Court Family Violence Court exists to deal specifically with matters relating to DFV. These can be through IOs as well as criminal charges related to the offending which required the IO. Further statistical information on IO with associated charges made within 10 days of the charge being issued is provided in Appendix 9.

DFV matters will remain within this court from inception until the matter is listed for trial. This helps to ensure awareness of the complainant's ongoing safety and the defendant's behaviours while multiple matters are being navigated. However, criminal charges that are major indictable offences, regardless of whether they involve domestic and family violence, are dealt with in the dedicated Committal List until they are committed to the Higher Courts.

The Youth Court has some capacity to refer young people in the criminal justice system to services and support. Usually, this is through obligations in sentencing. Youth Justice Case Management, Family Conferencing and the Exceptional Needs ISP program can refer a young person to the KIND program (Kinship, Improving relationships, No violence and Developing skills) which is delivered with the young person, their family, or their partner.⁴⁹

Gaps and opportunities

The expansion of Family Advocacy and Support Service (FASS) may support further early identification of people impacted by DFSV and referrals to services. Currently, FASS is located at Federal Circuit and Family Court of Australia and provides duty lawyer and social support services to people with family law matters who have been affected by family violence.⁵⁰ Previously FASS would attend private IO listings at the AMC; however, this no

specialist conferences, seminars and webinars on specific aspects of law, procedure, judicial skills and social context issues. More information is available at: <https://www.judcom.nsw.gov.au/judicial-education/continuing-judicial-education>

⁴⁸ The Commonwealth's *Rapid Review of Prevention Approaches to End Gender-Based Violence* 2024, p.84) notes that recent intimate partner homicides have highlighted 'an urgent need for stronger, more comprehensive and more consistent risk-assessment and intervention models to support decision-makers to identify, assess and then manage risk more effectively'.

⁴⁹ The KIND program provides tailored systemic intervention to address adolescent perpetrated family and IPV. More information is provided at: <https://onlinelibrary.wiley.com/doi/abs/10.1002/anzf.1364>

⁵⁰ For further information, see: [Family Advocacy and Support Service - Legal Services Commission of SA \(lsc.sa.gov.au\)](https://www.lsc.sa.gov.au)

longer occurs and a representative from WDVCS may attend instead. Broadening the access of FASS to all courts for DFSV matters may in turn result in complainants and/or protected persons and defendants connecting with specialist services at an earlier point.

Currently, young people using violence do not have access to mandated intervention programs as provided for adults in the Magistrates Court. While referrals can be made to the KIND program, the ability to refer is restricted by the program's capacity. If the KIND program was expanded to support mandated attendance of young people who have come to the attention of the justice system, this would present a significant opportunity to intervene early and prevent these behaviours becoming entrenched.

The courts have a rich depository of existing data and documents available through ECMS which may be leveraged to inform evidence-based policy and research on DFSV. To best utilise this resource, some funding is required to improve and refine current ECMS data to ensure it is usable for larger-scale and more complex analytical exercises. This includes resourcing to implement a large language model AI that can identify and synthesise information including, for example, on offenders' history of DFSV related offences.⁵¹ Such information could greatly assist in the early identification of alleged perpetrators with a history of violent offences, which in turn could inform improved risk assessment and referrals for alleged victims.

⁵¹ For example, data from affidavits has been matched to case files since 29 August 2022. With additional resourcing to support this AI functionality, the courts could more easily cross-reference an offenders' history with their criminal history (not including information prior to 29 August 2022).

Response

Court DFSV processes and initiatives

DFSV specific court processes provide alleged victims of violence with access to appropriate and timely justice responses and may prevent further harm. These processes play a critical role in how DFSV matters are prioritised, dealt with swiftly, and are informed by a significant level of judicial understanding and expertise.

Current responses

For non-compliance with the term of an IO and/or a bail condition, SAPOL will lodge criminal proceedings by filing an Information with the court in relation to the breach.

Breaches are criminal offences under the *Intervention Orders (Prevention of Abuse) Act 2009* and, for a breach of a term of an IO other than a term imposed under s13, can incur a penalty of a maximum of three years imprisonment for a basic offence and five year's imprisonment for an aggravated offence. Penalties will increase to a maximum of 10 years imprisonment where there are multiple contraventions or contraventions involving the threat of or actual physical violence.

In the Magistrates Court and Youth Court defendants may also be redirected to a specialist court if they are significantly impacted by mental illness and/or cognitive disability. The Section 269 (Part 8A) court, which sits at various locations of the Magistrates Court, deals specifically with matters where defendants are identified as not being mentally fit to stand trial or where their cognitive ability may have impacted the offence.⁵²

For major indictable offences involving DFSV, SAPOL lay charges on an Information in the Magistrates Court. If the charges are contested, the matter will be committed to the District Court for trial. If the accused pleads guilty, the matter will be committed to the District Court for sentence. Charges of murder or attempted murder are committed to the Supreme Court for trial or sentence. In the Youth Court, major indictable offences are heard summarily under the *Young Offenders Act 1993*.

In the ordinary course, if a matter proceeds to trial, the complainant of an offence must give evidence before the jury or a Judge (if it is a Judge alone trial). This involves the complainant being asked questions by the prosecutor (evidence in chief), cross-examined by defence counsel and then re-examined by the prosecutor.

⁵² The hearing of Section 269 matters is governed by the provisions of the *Criminal Law Consolidation Act 1935 (SA) Part 8A*, where the legislation defines mental impairment as including mental illness, intellectual disability, or disability or impairment resulting from senility.

Special measures have become standard practice for complainants of DFSV offences.⁵³ From 1 July 2016, two further measures were available for certain witnesses in the form of pre-recorded investigative interviews or evidence.⁵⁴

First, upon application by the prosecution, an audio-recording of an investigative interview between SAPOL and specified complainants/witnesses, in specified proceedings, may be tendered by the prosecution as the complainant's evidence in chief at trial. This applies to a person interviewed as the victim of an alleged child sexual abuse offence, as a child witness under the age of 14 years or a witness with a disability that adversely affects their capacity to give a coherent account of their experiences or to respond rationally to questions⁵⁵. It also applies to a complainant of a domestic violence offence.⁵⁶

Second, upon application by the prosecution, the evidence of specified complainants and/or witnesses in specified proceedings may be pre-recorded in court at a Pre-Trial Special Hearing (PTSH).⁵⁷ The audio-visual recording of the evidence from the PTSH may be tendered by the prosecution at trial so that the complainant/witness is not personally required to physically attend court for the trial.

In May 2021, the District Court implemented a pilot priority program pursuant to s50B of the *District Court Act 1991 (SA)*.⁵⁸ This program allows the District Court to fast track the pre-recording of the evidence of complainants of sexual abuse, where the alleged victim is a child or a person with a cognitive disability, by listing PTSHs within two to three months of Arraignment.⁵⁹ The pilot program was revised as it progressed in December 2021, May 2022 and November 2023.⁶⁰

⁵³ As articulated in the submission's section on Prevention, these measures include the court being closed to the public when the complainant gives evidence, the complainant giving evidence with a one-way screen between the complainant and the accused, the complainant being accompanied by a court companion and/or the complainant being accompanied by a canine companion. A complainant may give evidence remotely (via AVL transmission to the courtroom) attending from a vulnerable witness suite within the court precinct.

⁵⁴ *Evidence Act 1929 (SA)* ss12AB, 13BA, 13BB

⁵⁵ *Summary Offences Act 1953 (SA)*, s74EA

⁵⁶ *Evidence Act 1929 (SA)*, s13BB(2)

⁵⁷ It is noted the legislative definition of eligibility for a complainant of a domestic violence offence to have their pre-recorded police investigative interview used at trial (s13BB *Evidence Act 1929*) is different from their eligibility for a PTSH (s12AB *Evidence Act, 1929 SA*).

⁵⁸ Section 50B provides that the Court will give the necessary directions to ensure that a trial of a sexual offence where the alleged victim of the offence is a child or a person with a relevant disability is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows.

⁵⁹ Arraignment refers to the first appearance of a matter in the District Court.

⁶⁰ Upon each revision, information was provided to the profession and made available on the CAA website: <https://www.courts.sa.gov.au/download/district-court-sitting-in-adelaide/>

The pilot program was rolled out on 1 January 2024 as the Criminal Priority Programme. The main features of this pilot are that the District Court:

- lists the complete trial (rather than just a PTSH) of matters involving child complainants and cognitively impaired adult complainants of sexual abuse within three to four months of Arraignment; and
- prioritises the listing of PTSH for any eligible witness (which includes a complainant of a domestic violence offence) within three to four months of Arraignment. The prosecution must file an application for a PTSH for Arraignment in the District Court.

As argued by legal academic Heather Douglas, defendants can deliberately take actions to delay court proceedings to cause further distress and difficulty for their victim.⁶¹ This behaviour is known as 'systems abuse' and is referred to in the National Domestic and Family Bench Book as abuses of processes that may be used by defendants/respondents in the course of DFV related proceedings to reassert their power and control over the applicant/complainant.⁶² The National Domestic and Family Violence Bench Book provides guidance on responding to systems abuse, including through examples of relevant cases and decisions.

Gaps and opportunities

Even with processes in place to expedite DFSV related offences, the justice system can move slowly due to issues such as:

- The availability of the legal representatives, defendant, complainant and witnesses involved in proceedings.
- The availability of prosecutors and defence counsel, especially in Higher Court matters.
- The availability of courtrooms and court resources.
- The availability of experts and expert reports, such as forensic evidence and, psychiatric and psychological reports.
- Unresolved procedural issues.
- Additional time required to engage in negotiations between the prosecution and defence.

⁶¹ Douglas, Heather. "Legal systems abuse and coercive control." *Criminology & criminal justice* 18, no. 1 (2018): 84-99.

⁶² Australasian Institute of Judicial Administration and Attorney-General's Department (Commonwealth). 2024. "Systems Abuse." National Domestic and Family Violence Bench Book. <https://dfvbenchbook.ajja.org.au/article/1080119>

- Reluctance on the part of complainant and/or protected persons to engage in the process.

SA currently has only one building in the metropolitan area, the SSWB, with courtrooms equipped to support criminal jury trials in the Supreme and District Courts. In the 2023-24 financial year there were 1,292 criminal lodgements in the District Courts and 1,783 finalisations, and 340 criminal lodgements and 334 finalisations in the Supreme Court.⁶³ The SSWB currently has access to 13 criminal courtrooms and seven civil courtrooms.

The SSWB is ageing and carries significant risk for the progression of DFSV related criminal trials that require a jury. Even when all courts are operational, infrastructure constraints such as the size and accessibility of courtrooms can cause delays in listings. Any delay can have negative impacts on alleged victims, particularly when matters involve physical or sexual assault.

The Criminal Priority Programme in the District Court, while resulting in sufficient efficiencies for sexual violence matters, is only available for select matters involving specific complainants. Expanding this program to adult complainants in sexual violence matters, and for DFSV matters where the complainant is experiencing high levels of risk and/or is impacted by significant emotional distress would result in more timely access to justice. However, careful consideration of resources is required to ensure there is system capacity to support this expansion and it will not have an adverse impact on hearing other criminal trials.

Resourcing a formal evaluation and/or review of the Criminal Priority Programme would assist in understanding the benefits of expansion of the current program.

In the Youth Court, proceedings for major indictable sexual offences are conducted by legally qualified prosecutors attached to the Youth Prosecution Unit, rather than by the ODPP. One consequence of this is that complainants do not have the benefit of the Witness Support Scheme available in the ODPP.

Court-mandated programs

Court-mandated programs provide an opportunity to connect people allegedly using violence with programs that support a lasting and holistic change in their behaviour. These programs are tailored to the individual experiences and capabilities of people allegedly using violence, which increases their success of long-term change.

⁶³ Data on finalisations and lodgements sourced from CAA 2023-24 Annual Report (unreleased). Data for the annual report was extracted from ECMS and is current as of 8 November 2024.

Current responses

At various points in the justice system, defendants can be mandated to attend MBCPs prior to being sentenced. In SA, a Magistrate has the power to require a defendant to be assessed for the APP by CAA Case Managers. The Case Managers then determine the appropriate form of intervention program and the defendant's eligibility for the services included in the program.⁶⁴ A defendant may be mandated to attend a program as part of their interim IO or as a condition of their bail or final IO.

The APP was established in 2011 pursuant to s13 of the *Intervention Orders (Prevention of Abuse) Act 2009*. The APP operates in the Magistrates Court Family Violence lists throughout metropolitan Adelaide and is available across regional locations due to an online program implemented during the COVID-19 pandemic. It is part of an interagency response model with the primary focus of enhancing and ensuring the safety and protection of women and their children from DFV. Due to resourcing limitations the APP is only available to men who are subject to an IO and who may also have related criminal matters against their current or former female partner.

Defendants who appear in the Magistrates Family Violence Court who have been issued with an interim IO and/or charged with related criminal matters can be referred for an APP assessment. Defendants who are not subject to an IO but are facing charges for domestic violence related offences can also be referred to the program under the *Bail Act 1985*.⁶⁵

It is noted that men who are referred to the APP do not need to agree with the allegations. Most men who participate are contesting their current court matters but, through program engagement, are prepared to learn new strategies of managing their behaviour in relationships.

If found suitable, the defendant then participates in one of the available program streams delivered by RASA or KWY. The program delivered by RASA has a capacity of 196 defendants, and the program delivered by KWY has a capacity of 10 defendants, at any given time. The defendant's progress on the program is judicially monitored. Throughout the defendant's time in the program, interim reports are provided to the court, prosecutor, and the defendant's lawyer (if they are represented) to update them on the defendant's progress. The defendant also returns to court to discuss their progress on the program.

⁶⁴ Mackay, Gibson, Lam & Beecham 2015, *Defendant Interventions in Australia Part Two*, p20.

⁶⁵ Section 21B(2)(b) of the Bail Act requires that the court must give consideration to any representations made by the person in relation to the program. If, after hearing any such representations, the court determines to include such a condition, it is not necessary for the defendant 'to agree to this referral to proceed.' If it is included as a condition of the defendant's bail, the defendant could refuse to sign the bail agreement and, consequently, not be released on bail.

Reset2Respect (R2R) is a MBCP specifically tailored for men who have been referred by the APP. R2R focuses on psychoeducation and therapeutic strategies which enable men to address their use of violence and to behave safely in relationships. The APP is primarily accountable to the safety and best interests of women and their children. The 24-week program is provided to high-risk men who require high-intensity intervention, whereas the 12-week program is aimed at lower-risk defendants, such as those who do not have criminal charges pending alongside their IO.

One-to-one counselling sessions are predominantly provided to men who are unable to participate in group programs, due to reasons such as language barriers, significant mental illness or their work schedules (e.g. FIFO workers). Approximately eight by one-hour sessions are provided, with a total of 12 appointment slots (for all participants) available for eligible participants per week.

Within the APP, all staff hold either a Social Work, Social Science or Criminal Justice University degree and have training in trauma-informed responses and working with defendants. APP statewide staffing currently includes 1 FTE Team Leader, 2.8 FTE Senior Case Managers and 0.5 FTE Administrative Officer. The Team Leader and Senior Case Managers are based in Adelaide and also attend Elizabeth, Port Adelaide and Christies Beach Magistrates Courts. This team additionally undertakes phone assessment appointments with men referred from all Magistrates Court country locations.

The partners or former partners of defendants involved in the APP are referred to the WSCP. While it is a partner or former partner's choice to continue their engagement, WSCP will still initiate contact to determine whether further support and oversight is desired. WSCP provide additional oversight and support for this cohort through a range of services at different levels, from low-intensity telephone support to high-intensity casework depending on the needs of the protected person.

WSCP will ensure relevant information regarding risk and safety of the partner or former partner is provided to the APP. There are regular meetings facilitated between WSCP, APP, KWY and RASA to monitor high-risk cases.

Culturally adapted versions of the APP are facilitated by KWY. These programs are provided to Aboriginal and Torres Strait Islander defendants perpetrating DFSV and non-Aboriginal men who perpetrate violence against Aboriginal and Torres Strait Islander women and their children. A 12-week program is provided in metropolitan Adelaide. A 12-session program is offered in Whyalla over a six-week period, consisting of two sessions a week. A similar but condensed version of the 12-session program is provided in Port Augusta, consisting of four

sessions over two days per week, offered across a three-week period. Data regarding referrals to and completions of RASA and KKY is provided in Appendix 10.

The Magistrates Court can refer Aboriginal men who allegedly perpetrate DFSV and are living in select regional, remote and very remote areas to the Cross Borders Program (CBP). The program is run in Aboriginal Communities across the APY Lands and Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Lands and offered in selected prison locations across Western Australia, SA and the Northern Territory.⁶⁶ The CBP is available to men who are in custody or released under any orders and is funded and administered by the SA DCS.

The CBP is a three-week intensive program where participants complete 16 sessions over 15 days. Participants receive approximately 45 hours of group intervention and individual sessions, as tailored to their specific needs and requirements. The program is offered within community, and Aboriginal Elders are invited to talk with participating men.

CBP had a specific partner safety contact program to provide support to alleged DFV victims until 2014. A new program is being developed in partnership with the NPY Women's Council.

Defendants with specific needs may also be diverted into the Treatment Intervention Court (TIC), if their ability to engage in the APP is significantly compromised due to mental illness and/or substance dependence. However, this is only available to defendants who are charged with and plead guilty to minor indictable and/or summary offences related to substance dependence, mental illness or gambling problems.⁶⁷

The TIC provides programs to help people charged with offences who have mental health or mental impairment and/or illicit substance dependence problems and operates from all metropolitan Magistrates Court locations and the Youth Court. Programs offered through TIC aim to improve the health and wellbeing of the participant and reduce recidivism rates by stabilising the defendant's mental and physical health and addressing their substance dependence. Further information on the TIC program streams and their conditions is provided in Appendix 11.

Additionally, a gambling intervention program is available through TIC at the AMC that first commenced in 2015. OARS Community Transitions provides case management for this program, and therapeutic intervention is provided by Statewide Gambling Services. TIC staff

⁶⁶ Please note that as the CBP is not administered or funded by the CAA, program data cannot be provided for referrals and completions.

⁶⁷ Further information on eligibility for the Treatment Intervention Court is available at <https://lsc.sa.gov.au/dsh/ch04s11.php>

undertake the eligibility assessment and monitor and report to the court on a participant's progress.

The aim of the gambling intervention program is to provide a diversion into treatment that will help people overcome their gambling problems and restore control over their lives; reduce the likelihood of reoffending and provide grounds for non-custodial sentencing. The program was evaluated in 2017 and was found to successfully meet objectives of reducing gambling urges and achieving non-custodial sentences for participants.

Culturally specific treatment programs are provided through the Aboriginal Community Courts at Adelaide and Elizabeth. Eligible defendants may defer sentencing for a period of six months to enable their participation in the program.

Once it is determined that a defendant meets the eligibility requirements for participation in a TIC stream, an assessment report will be ordered by the court. Where a defendant is eligible to participate in the 12-month substance dependence stream, a home detention report will also be ordered.

Progress reports are provided to the court for each appearance. The reports outline progress, success and any difficulties or setbacks faced by the defendant for each review period. At each progress review, the Magistrate will discuss breaches of bail conditions, drug use and any other issues directly with the defendant. Failure to make positive progress on the program, ongoing breaches of conditions, and re-offending may lead to the termination of the defendant's participation in the program.

Gaps and opportunities

Further expansion of the APP is a clear opportunity to significantly increase the connection of defendants with high-quality MBCPs. The APP is unique, in that attendance can be mandated at a defendant's earliest point of connection with the justice system if it is made a condition of an IO.⁶⁸ Defendants who are not subject to an IO but are facing charges for DFV related offences can also be referred to the program under the *Bail Act 1985*.

It is worth noting that the APP aligns with the National Outcome Standards for Perpetrator Interventions (NOSPI), developed by the Council of Australian Governments.⁶⁹ A summary of the APP's compliance with NOSPI standards is provided in Appendix 12.

⁶⁸ Please refer to the earlier section on Early Intervention for further detail on IOs and their relationship with the APP.

⁶⁹ Commonwealth of Australia (Department of Social Services). 2015. "National Outcome Standards for Defendant Interventions." Government Document, Canberra.
https://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/04/nospi_coag_paper.pdf

Expansion of the APP requires further resourcing to ensure the program meets the needs of defendants from diverse cultures, communities and circumstances.⁷⁰ The APP does not offer tailored versions for men from culturally and linguistically diverse backgrounds, or for men with a cognitive disability. While these cohorts are generally prioritised for one-on-one counselling, there are significant limits to the places available and the number of sessions provided. Additionally, men living in regional areas of SA only have access to an online program. Resourcing to ensure contested matters can be fast tracked is also necessary.

In line with previous commentary within the section 'Early Intervention', access to the APP is limited to men who are perpetrating violence against a current or former female partner. There is no mandated programming provided to people perpetrating violence in LGBTIQ+ relationships. SA GBQT (Gay, Bisexual, Trans and Queer) men and non-binary/gender diverse people currently have limited access to an online MBCP offered by Thorne Harbour, which is voluntary in nature.⁷¹

Further, there are no mandated programs available targeted at women perpetrating DFSV against other women, men and non-binary people in an intimate partner context.⁷²⁷³ There are also no mandated programs targeted at men or women who are perpetrating violence against children or other family members, but not a current or former intimate partner.⁷⁴

There is limited crossover between the APP and TIC in that a defendant cannot partake in both at the same time. Evidence suggests that problematic alcohol and other drug use

⁷⁰ Research suggests that youth, low educational status, low income, unemployment, marital status and membership of a minority ethnic group are associated with higher dropout rates in MBCPs. For further information, see Jewell, Lisa M., and J. Stephen Wormith. "Variables associated with attrition from domestic violence treatment programs targeting male batterers: A meta-analysis." *Criminal Justice and Behavior* 37, no. 10 (2010): 1086-1113.

⁷¹ For further information on this initiative, please visit: <https://thorneharbour.org/services/relationship-family-violence/behaviour-change/>

⁷² Research suggests women who use violence usually have a long history of victimisation and long-term experiences of precarity, and are more likely to have experienced incarceration, mental health issues, substance abuse and childhood abuse and neglect. For further information, see Damant, Dominique, Carole Boulebsol, Valerie Roy, and Matis Trudeau. "Understanding the trajectories of women who use violence through an intersectional feminist analysis." *Affilia* 38, no. 3 (2023), p.433..

⁷³ While offender programs for women are rare in Australia, Victoria implemented the +SHIFT (Positive Support and Healing creates Innovative Forward Thinking) from October 2018 to June 2020. In total, the +SHIFT program provided services to 88 women who used force in their relationships; most participants reported experiences of mental health issues, and almost all had experienced DFSV at some point in their lives. For further information, see Larance, Lisa Young, Margaret Kertesz, Cathy Humphreys, Leigh Goodmark, and Heather Douglas. "Beyond the victim-offender binary: Legal and anti-violence intervention considerations with women who have used force in the US and Australia." *Affilia* 37, no. 3 (2022), p.477.

⁷⁴ It is noted that the APP's Reset2Respect program does contain modules with specific sections regarding the impact of DFV on children and developing improved parenting skills.

(AOD) contributes to the escalation of DFV, although these issues are often not addressed with concurrent interventions.^{75 76}

A combined AOD and MBCP program would significantly address this gap. The CAA previously made a proposal to secure funding to pilot such a program. Further detail on the proposed pilot is included in Appendix 13.⁷⁷

There are similar gaps regarding the ability of a defendant to participate concurrently in the APP and the TIC gambling intervention program. Evidence from systematic reviews and Australian research suggests problem gambling is significantly correlated with DFSV perpetration and victimisation.⁷⁸

As noted in the previous section on Early Intervention, young people using violence do not have access to MBCPs. This is a significant missed opportunity to address the use of violence behaviours before they become entrenched, especially for young people whose use of violence is connected to their own exposure to, and experience of, DFSV.⁷⁹ The case study provided at Appendix 14 highlights the impact of this gap, including how it may influence a young person's continued connection with the justice system. Ideally, any mandated MBCPs for young people would be accompanied by investment in a partner and family safety contact program that supports protected persons.

⁷⁵ Meyer, Silke, Nicola Helps, Jasmine McGowan, and Harley Williamson. "Domestic violence and alcohol and other drug use: Australian pilot intervention findings." *Research on Social Work Practice* 34, no. 7 (2024): 781-792.

⁷⁶ Commonwealth of Australia (Department of Social Services), 2015, p.9.

⁷⁷ The proposed program was modelled on the KODY program (Kids First [Caring Dads] and Odyssey House) trialled in Victoria, which utilises an all-of-family approach to concurrently address the use of DFSV and substance misuse. Australia's National Research Organisation for Women's Safety (ANROWS) is currently undertaking an evaluation of this program. For further information on the ANROWS evaluation of the Kody Project, please visit: <https://www.anrows.org.au/project/kody-researching-an-all-of-family-program-in-family-violence-substance-misuse/>

⁷⁸ A 2014 Australian study, which systematically screened clients across 15 treatment services, established that the prevalence of any family violence in treatment-seeking gamblers was 33.9%. The prevalence of family violence in the gambling sample was 27.0% for victimisation, 22.9% for perpetration, and 33.9% for any form of family violence. For further information, see Dowling, Nicki, Aino Suomi, Alun Jackson, Tiffany Lavis, Janet Patford, Suzanne Cockman, Shane Thomas et al. "Problem gambling and intimate partner violence: A systematic review and meta-analysis." *Trauma, Violence, & Abuse* 17, no. 1 (2016): 43-61.

⁷⁹ Fitz-Gibbon, Kate, Silke Meyer, Hayley Boxall, Jane Maree Maher, and Steven Roberts. 2022. *Adolescent family violence in Australia: A national study of prevalence, history of childhood victimisation and impacts*. Sydney: ANROWS, p11. https://researchmgt.monash.edu/ws/portalfiles/portal/403078913/FitzGibbon_et_al_AFVinAus.pdf

Recovery and Healing

Trials, sentencing and other reconciliatory measures

Research suggests that people experiencing DFSV have varied motivations for seeking justice. For many people in this cohort, their central goals are for the violence to stop, to have the defendant held accountable for their use of abuse, and to ensure other members of the community do not experience harm from this person.⁸⁰ Their satisfaction and confidence in the criminal justice system is influenced by the perceived fairness of the procedures used to make a decision, regardless of the eventual outcome.⁸¹

The trial process, regardless of outcome, is an opportunity to increase the protection of the complainant from the defendant and ease the burden placed upon them to keep themselves safe. A defendant may be placed into custody on remand or released on bail while court proceedings are in progress with strict conditions aimed at preventing further harm to the complainant.⁸² When a defendant is sentenced, there is also an opportunity to engage in further rehabilitative programs provided by the DCS aimed at addressing their use of violence.

Current responses

Participation in the criminal justice system can assist complainants in feeling more in control of their circumstances and lead to increased feelings of safety and wellbeing, regardless of case outcome.⁸³ When facilitated by adequate trauma-informed support and provisions, they may feel an increased sense of representation in court proceedings that supports further recovery and healing.⁸⁴

Under the *Sentencing Act 2017* s14, a person who has suffered injury, loss or damage resulting from an indictable offence may provide the sentencing court with a Victim Impact Statement (VIS). A VIS is a personal written statement that speaks to the impact, loss or damage suffered as a result of a crime. A VIS is provided to the court after the defendant has been convicted for an offence but before they have been sentenced, so that the Judge or

⁸⁰ Holder, Robyn L., and Kathleen Daly. "Sequencing justice: A longitudinal study of justice goals of domestic violence victims." *The British Journal of Criminology* 58, no. 4 (2018): p.800.

⁸¹ Meyer, Silke, and Harley Williamson. "General and specific perceptions of procedural justice: Factors associated with perceptions of police and court responses to domestic and family violence." *Australian & New Zealand journal of criminology* 53, no. 3 (2020): 333-351.

⁸² Payne, Jason. 2007. *Criminal trial delays in Australia: trial listing outcomes*. Report, Research and Public Policy Series No. 74, Canberra: Australian Institute of Criminology, p.3.

⁸³ Epstein, Deborah and Goodman, Lisa A. "Domestic Violence Victims' Experiences in the Legal System". 2012. In *Stress, trauma, and wellbeing in the legal system*, eds. Monica K Miller and Brian H. Bornstein. Oxford University Press, USA. 48.

⁸⁴ Specific information on current provisions and initiatives aimed at supporting victims providing evidence are provided in the sections on Prevention (see vulnerable witness provisions on pages 16-17) and Response (see Priority Listing program and pre-trial hearings on pages 36-37).

Magistrate can take the VIS into consideration when sentencing.⁸⁵ It is only used in circumstances where the defendant pleads or is found guilty.⁸⁶ A VIS can be presented in court by:⁸⁷

- Being read aloud by the victim themselves.
- Having a person nominated by the victim read the VIS aloud. In some cases, this may be the Commissioner for Victim's Rights.
- Having the prosecutor read the VIS aloud.
- Submitting the VIS to the court without it being read aloud.

Once court proceedings are completed, the VIS becomes a part of the official court record. If the judicial officer references the VIS at a sentencing hearing, the victim's comments will be made available to the media and included in written sentencing remarks.⁸⁸

In the Youth Court, victims of DFSV related offences found to be perpetrated by a young person can participate in a Family Conference under provisions in Division 3 of the *Young Offenders Act 1993*.⁸⁹ The aims of this process include, but are not limited to, providing victims with the opportunity to actively participate in seeking reparation, and setting the scene of future restoration of trust between the young offender, people close to them, and others affected by the offence.⁹⁰

Family Conferences have a theoretical grounding in principles of restorative justice and provide an opportunity for the victim(s) to participate in criminal proceedings.⁹¹ At a Family

⁸⁵ Commissioner for Victim's Rights. n.d. In your own words: Preparing a Victim Impact Statement. Pamphlet, Adelaide: Government of South Australia, p.2.

⁸⁶ In SA, victims are afforded a significant degree of flexibility in the delivery of their VIS and how it is written. Generally, a VIS will be written in a victim's own words; if a victim is unable to write their own statement due to age, disability or other reasons, a member of their immediate family or another trusted adult can assist them.

⁸⁷ Victims of Crime South Australia. n.d. "Submitting a VIS to the court." Victims of Crime South Australia, Government of South Australia. Accessed October 24, 2024.

<https://www.voc.sa.gov.au/going-to-court/victim-impact-statements/submitting-a-victim-impact-statement-to-the-court>

⁸⁸ If a VIS is read aloud in court, it can be reported in the media. However, there are remedies available to protect victims' privacy. A court can order that information from a VIS cannot be reported on by the media; additionally, a victim can apply to the Judge or Magistrate to close the courtroom to the media and general public.

⁸⁹ Youth Justice Coordinators employed by the Conferencing Unit are appointed under the *Courts Administration Act 1993* to convene Family Conferences, which can occur when a young person between 10-18 years of age admits to the commission of an "offence" within the meaning of the *Young Offenders Act 1993*.

⁹⁰ Further information on the aims and processes of Family Conferences is available at:

<https://www.courts.sa.gov.au/going-to-court/court-locations/youth-court/family-conferences/>

⁹¹ Research demonstrates significant value regarding the role restorative justice practices in promoting healing for victims of crime, with noticeable effects recorded on post-traumatic stress and emotional wellbeing. There is also evidence to suggest that restorative justice practices may be effective in reducing the recidivism of young offenders, alongside increasing perceptions of satisfaction and fairness for victim and youth participants. For further information, see Nascimento,

Conference the young offender, their parents, guardians, family and friends, the victim of the offence and their supporters, and a SAPOL Youth Officer are brought together by the Youth Justice Coordinator to discuss the offence and to decide how the offence will be dealt with. Unless the only outcome required is a formal caution, Family Conference outcomes may require a young person to undertake any or all of the following actions:

- Pay compensation to the victim for loss or damage caused.
- Carry out a specified period of community service (not exceeding 300 hours).
- Apologise to the victim of the offence.
- Anything else that may be appropriate in the circumstances of the case.

Bail determinations are used during trials, where appropriate, to protect the fundamental rights of the defendant while also ensuring any risks concerning their behaviour are mitigated.⁹² In SA, it is a condition of every bail agreement that the person released on bail must not leave the State for any reason without seeking the permission from the Court or another relevant authority.⁹³

Under the *Bail Act 1985* s11(1) bail agreements also stipulate that the person released on bail is prohibited from possessing firearms and ammunition and must submit to gunshot residue testing as reasonably required. Additional conditions must be included if the applicant for bail is a serious and organised crime suspect,⁹⁴ or has been charged with child sex offences.⁹⁵

A full list of eligibility for bail, and further conditions that may be imposed as part of a bail agreement is provided in Appendix 15.

From 1 October 2024, a grant of bail for a breach of a recognised domestic violence IO involving physical violence or a threat of physical violence must include conditions requiring home detention and electronic monitoring.⁹⁶ This form of home detention does not mandate supervision and defendants subject to these provisions are not automatically

Ana M., Joana Andrade, and Andreia de Castro Rodrigues. "The psychological impact of restorative justice practices on victims of crimes—a systematic review." *Trauma, Violence, & Abuse* 24, no. 3 (2023): 1929-1947 and Kimbrell, Catherine S., David B. Wilson, and Ajima Olaghere. "Restorative justice programs and practices in juvenile justice: An updated systematic review and meta-analysis for effectiveness." *Criminology & Public Policy* 22, no. 1 (2023): 161-195.

⁹² Auld, Lachlan, and Julia Quilter. "Changing the rules on bail: An analysis of recent legislative reforms in three Australian jurisdictions." *University of New South Wales Law Journal*, 43, no. 2 (2020), Changing the rules on bail: An analysis of recent legislative reforms in three Australian jurisdictions (informit.org), p.644.

⁹³ *Bail Act 1985 (SA)* s 11(6).

⁹⁴ *Bail Act 1985 (SA)* s 19A.

⁹⁵ *Bail Act 1985 (SA)* s 10AA.

⁹⁶ *Bail (Conditions) Amendment Act 2024 (SA)*.

prohibited from using drugs and alcohol. However, these conditions can be included in any grant of bail if a court orders them. In these circumstances there is a presumption against bail for defendants charged with violent breaches of IOs.⁹⁷

These bail conditions can act as a layer of protection for victims while awaiting the outcome of a trial, as breaches can result in additional criminal charges for the defendant and their entry into custody. The maximum penalty is a fine of \$10,000 or imprisonment for two years and is a penalty separate to any penalty for the original offence.⁹⁸

In circumstances where a defendant is not given bail they remain in custody on remand until the conclusion of the trial, although there are opportunities to make further applications for bail throughout the trial process. This offers significant physical protection for victims and their families in circumstances where it is likely that defendants will continue to inflict grievous physical and psychological harms.

Sentencing provides an important opportunity for judicial officers to emphasise the accountability of the offender and to recognise the harm done to the victim.⁹⁹ Under s3 of the *Sentencing Act 2017*, the primary purpose for sentencing a defendant is to protect the safety of the community (including the victim[s] of violence). Sentencing may also include the finalisation of an IO, or its withdrawal in some circumstances.

The maximum penalties able to be applied in sentencing are prescribed in legislation, with greater penalties available for offences with aggravating circumstances. For example, under the *Criminal Law Consolidation Act 1935* s20(d), the offence of assault attracts greater penalties if violence against a family member is involved.¹⁰⁰

While guided by legislation, judicial officers also consider the following matters when sentencing a defendant for an offence:¹⁰¹

- Whether there are any prior offences, including for serious offences that may make the defendant liable to be declared a serious repeat offender.

⁹⁷ Legal Services Commission South Australia. 2024. "Conditions of Bail." Duty Solicitor's Handbook. Accessed October 24, 2024. <https://lsc.sa.gov.au/dsh/ch08s07.php>.

⁹⁸ Ibid.

⁹⁹ Australian Law Reform Commission and NSW Law Reform Commission. 2010. Family Violence - A National Legal Response. Summary Report, Sydney: Commonwealth of Australia. https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114_WholeReport.pdf

¹⁰⁰ The definition of family member includes (a) spouse or former spouse (including an opposite sex de facto spouse) of the *offender*; (b) child of whom the *respondent* or a spouse or former spouse of the respondent has *custody* as a parent or *guardian*; (c) child who normally or regularly resides with the respondent or a spouse or former spouse of the respondent.

¹⁰¹ Legal Services Commission South Australia. 2024. *SA Law Handbook*. August 26. Accessed October 24, 2024. <https://www.lawhandbook.sa.gov.au/ch13s05s03.php>.

- Other relevant matters such as the prosecution's outline of any injury, loss or damage resulting from the offence, any applications for restitution or compensation on behalf of the victim and/or any VIS.
- Mitigating circumstances outlined by the defendant or their lawyer.
- In instances where a person is found guilty of a sexual offence judicial officers must consider whether an IO is required, as prescribed under s28(5) of the *Sentencing Act 2017*. If the Court determines an IO should not be issued under this section, they must provide reasons for this determination.¹⁰²

As part of their sentencing, defendants may be mandated to be assessed or and, if found suitable, attend an MBCP in either custodial or community settings. These programs are offered by the DCS.

Gaps and opportunities

The processes of trials and sentencing are most suited to victims and defendants who are separating, or who have already separated.¹⁰³ If an IO is ultimately withdrawn as part of a matter's finalisation, this effectively lessens the ability of the court and SAPOL to intervene and prevent a defendant from engaging in further abuse of a victim, and to direct parties to relevant services.

In such circumstances, an IO can be applied that does not include no-contact conditions. However, this may leave victims vulnerable to further harm if breaches are not identified and proactively enforced.

Working with families impacted by DFSV related deaths

Investigations and inquests into DFSV related deaths present an important opportunity to work with grieving families and assist them in beginning their journey of recovery and healing. This may include circumstances where an intimate partner homicide has occurred, or where a person has suicided due to ongoing DFSV.

¹⁰² Under s 28(5) of the *Sentencing Act 2017*, the term 'sexual offence' refers to any offence involving: rape; compelled sexual manipulation; indecent assault; unlawful sexual intercourse or an act of gross indecency; incest; sexual exploitation or abuse of a child, or exploitative and sexually explicit material of children; sexual exploitation of a person with a cognitive impairment; or an attempt to commit, or assault with intent to commit, any of the previously mentioned offences.

¹⁰³ The courts observe many instances where IOs are withdrawn, and matters are not pursued, as the victim does not want to end their relationship with the alleged defendant. For example, separation may not be an option due to a lack of financial resources; concerns for the welfare of children, family and pets; disability, lack of alternative, safe accommodation; inadequate formal support systems; disrupted social networks; religious and cultural beliefs preventing them from leaving; and fear of retaliation by the defendant. For Aboriginal families in particular, family separation is often not a preferred option due to familial experiences of forcible separation endured by the Stolen Generations and resulting intergenerational trauma.

Coronial proceedings, due to their nature, can be significantly re-traumatising for families and require handling in a sensitive, respectful manner. Family members may be required to identify the body of their loved one and could face delays to arranging their funeral if further investigation is required (such as a post-mortem examination). In circumstances where an inquest is required, family members may also be called as witnesses to give evidence.

Current responses

Social workers are employed in the Coroners Court to provide support to families as required. This support includes:

- Advising senior next of kin if postmortem examination is to occur.
- Notifying senior next of kin about the provisional cause of death following a postmortem examination.
- Answering queries related to postmortem examinations.
- Providing information and advice on State Government funeral assistance.
- Contacting the senior next of kin in circumstances where the organs of a deceased person are retained, to discuss options available to the family.
- Providing referrals to other support services, such as grief counselling.

Gaps and opportunities

While families and other next of kin do have access to social workers in the Coroners Court, they do not provide therapeutic support beyond referrals to other services. Unlike other courts, witnesses in the Coroners Court are not victims of crime and do not have the same supports available throughout proceedings, even in instances where they are impacted by DFSV.

In New South Wales (NSW), the Coronial Information and Support Program is available to provide information and support to persons affected by deaths reported to the coroner. This includes providing specific support and preparation to family and friends if they are to appear as a witness at a Coronial Inquest, providing general information to familiarise parties with the court, and providing support when sensitive information such as photographs, forensic reports and CCTV is viewed.¹⁰⁴

There is also a specific need to increase the cultural safety and support of Aboriginal families in the Coroners Court, including by facilitating cultural protocols and locating members of

¹⁰⁴ Coroners Court NSW. 2023. "Guidance and information." Coroners Court New South Wales. May 11. Accessed October 24, 2024. <https://coroners.nsw.gov.au/help-and-support/guidance-and-information.html#:~:text=The%20Coroner%27s%20involvement%20in%20a,Coroner%20in%20New%20South%20Wales.>

kinship groups. In Victoria, there is a Koori Engagement Unit, led by the Koori Family Engagement Family Coordinator, which ensures that:¹⁰⁵

- Every Aboriginal person's passing is recorded, and their family is engaged with through the Court process;
- The Court, through care of the deceased, engages in best practice to support cultural protocols and guidelines; and
- Families are supported in navigating through processes in a culturally responsive way.

Family reunification, mediation processes and preventing young people from being over criminalised

Family reunification, mediation processes and efforts to prevent young people from over-criminalised are critical in supporting the recovery and healing of young people impacted by DFSV.

Early contact with the criminal justice system is a significant adverse childhood event, which increases young people's risk of reoffending, and is associated with perpetrating and/or experiencing violence as an adult.¹⁰⁶ Further, research has established that young people involved in the youth justice system are likely to have endured multiple adverse childhood experiences, including exposure to DFSV and other experiences of child maltreatment.¹⁰⁷ Of particular concern are 'crossover kids', defined as young people who have come into contact with the care and protection system and the youth justice system.¹⁰⁸

Where it is safe to do so, reconnecting young people with their families and offering them a voice can provide significant closure and access to safer environments that enable healing. In instances where this is unachievable, steps can still be taken to ensure the most marginalised young people are offered opportunities to change, grow and break their cycle of offending and institutionalisation.

¹⁰⁵ Butler, Kerryn. 2021. *Aboriginal and Torres Strait Islander families in Australian Coroners Courts*. Law and Justice Foundation of New South Wales, p.11.

¹⁰⁶ Malvaso, C. G., Cale, J., Whitten, T., Day, A., Singh, S., Hackett, L., ... & Ross, S. (2022). Associations between adverse childhood experiences and trauma among young people who offend: A systematic literature review. *Trauma, Violence, & Abuse*, 23(5), 1677-1694.

¹⁰⁷ Ogilvie, James, Lisa Thomsen, Jodie Barton, Danielle Arlanda Harris, John Rynne and Patrick O'Leary. 2022. *Adverse childhood experiences among youth who offend: Adverse childhood experiences among youth who offend: Research Report*, Sydney: ANROWS, p.8.

¹⁰⁸ A 2019 study examining this cohort found that three-quarters of the 'cross-over kids' included in the research had been exposed to family violence (73%, n = 220). For further information, see Baidawi, Susan, and Rosemary Sheehan. "'Crossover kids': Offending by child protection-involved youth." *Trends and issues in crime and criminal justice* 582 (2019), pp.1-2.

Current responses

In the care and protection jurisdiction, the risk of harm to a child or young person from exposure to DFSV is often one of the primary child protection concerns leading to their removal and a subsequent application for guardianship orders being made to the Youth Court. The role of the court is to hear the applications made by the Chief Executive of the Department for Child Protection (DCP) pursuant to s53 of the *Children and Young People Safety Act 2017*.

The usual applications seek short-term guardianship orders of six, nine or 12 months or alternatively a long-term guardianship order seeking an order that the child or young person be placed under the guardianship of the Chief Executive until they attain the age of 18 years. The involvement of the court ends with the making of a final order, unless the matter is referred to the Reunification Court.

The Reunification Court is a Youth Court initiative, established in 2019, aimed at empowering families to work towards sustainable change that ensures safety for their children. It was developed based on principles of 'smart justice and therapeutic jurisprudence' in other interstate and international jurisdictions, which place emphasis on working with families in a non-adversarial way and identifying and encouraging development of their strengths.

If the DCP identify in the case plan that reunification may be viable, and the parents and the Child Representative consent to the matter being referred to the Reunification Court, the judicial officer may make an interim order usually for a six, nine, or 12-month period and adjourn the matter to this court.

In the Reunification Court, the Court has a direct role in overseeing the implementation of case plan outcomes which directly relate to the child protection concerns and the progress made by parents or guardians being assessed for reunification. The dual accountability for both the DCP worker and the family to undertake timely actions and to regularly appear before the Court enables parents to develop trust in the support systems available to them.

In DFSV related matters, the relevant outcome will often require the parental victim to attend domestic violence counselling to increase both their understanding of domestic violence and their insight into the impact of domestic violence upon the child and upon their own capacity to parent. If the defendant is also being considered for reunification, they will usually be required to attend domestic violence counselling and/or to participate in a MBCP. The DCP will provide this referral and will connect the defendant with service providers as based on their immediate availability.

The *Children and Young People Safety Act 2017* also provides for the Chief Executive of the DCP or the court to convene a family group conference where a child is suspected to be at risk, to enable informed voluntary decisions to be made as to the arrangements for the care of the child or young person. It is a diversionary process with the aim of avoiding court proceedings with the clear intention of supporting and empowering participants and their families to make the necessary changes to keep them and their children safe.

Gaps and opportunities

While a Practice Direction concerning the operation of the Reunification Court has been published, it has not been enshrined in legislation. This poses a risk that, should organisational change occur, the Reunification Court may cease to operate. As noted in the Youth Court's Final Response to the Royal Commission's Issues Paper, embedding this process into legislation is vital to ensure its continuation.

The more widespread use of Family Group Conferences is a key opportunity to address child protection concerns associated with family, domestic and sexual violence in care and protection proceedings.¹⁰⁹ Critically, young people who are under guardianship orders and placed in residential care are often overly criminalised for behaviours that would not result in police intervention within the family home.¹¹⁰ The case study presented in Appendix 16 illustrates this issue and the impacts it can have for a young person's future trajectory, including their recovery and healing.

Consequently, formalised guidelines to avoid the over-policing of these young people residing in residential care placements are greatly needed in SA. Protocols of this type exist in most other States and ensure that young people do not enter or stay engaged in the criminal justice system inappropriately. NSW, Victoria and Queensland all have good examples of the type of protocols that would be useful in SA.¹¹¹

¹⁰⁹ It is noted that one of the changes proposed in the *Children and Young People (Safety and Support) Bill 2024* is to recognise, respect and support self-determination and embed the principle of family-led decision making by the holding of Family Group Conferences for Aboriginal families (s 52). While the increased use of Family Group Conferences for Aboriginal families is incredibly beneficial, this opportunity would also greatly benefit non-Aboriginal families involved in the care and protection system.

¹¹⁰ A Dual Involved Project initiated by the SA Guardian for Children and Young People in 2022 found that out of the 16 dual-involved children and young people interviewed, 86.6% reported they were charged with damaging property at the residential care facility. For more information, see Office of the Guardian for Children and Young People (OGCYP). 2022. 'South Australian Dual Involved Project: Children and young people in South Australia's child protection and youth justice systems.' (Final Report, OGCYP, June 2022).

¹¹¹ For example, New South Wales Statewide Protocol to Reduce the Criminalisation of Young People in Residential Out of Home Care commits caregivers to a range of measures aimed at reducing the frequency of police involvement for minor offending and promotes the principle that criminal charges against a young person will not be pursued if there are alternative and appropriate means of dealing

Finally, greater attention is required to support young people who are eligible for bail but cannot return to the family home due to violence perpetrated against them. Currently, this cohort of young people is being detained in Kurlana Tapa Adelaide Youth Training Centre due to a lack of suitable placement. The establishment of a purpose-built bail accommodation facility for these young people would provide them with improved safety and help avoid their unnecessary institutionalisation.

with the matter. Further information on this protocol is available on pages 15-16 of the 2016 Victoria Legal Aid Report *Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system*, available at: <https://lmhn.net.au/wp-content/uploads/2022/06/apo-nid194346.pdf>

Appendices

Appendix 1: List of current Court assets¹¹²

TOTAL COURT ASSETS WITH BUILDING AREA, YEAR OF DESCRIPTION AND LOCATION

Asset	External Building area m ²	Internal Building area m ²	Property Description	Year of Construction	Location (Local Government Area)
Adel Mag Court/Coroners Court	12,777.00	10,345.00	260 - 280 Victoria Sq Adelaide SA 5000	1997	Adelaide
Adelaide Youth Court	2,852.00	2,411.00	81-83 Wright St Adelaide	2000	Adelaide
Bordertown	189.00	162.00	LT 4 Woolshed St Bordertown	1975	Tatiara
Ceduna	461.00	410.00	7 McKenzie St Ceduna SA 5690	1960	Ceduna
Christies Bch	2,606.00	2,233.00	Dyson Rd Christies Beach	2001	Onkaparinga
Clare	347.00	220.00	LT 16 Old North Rd Clare SA 5	1878	Clare & Gilbert Valley
Cooper Pedy	323.00	298.00	LT 2126 Malliotis Blvd Cooper	1990	Cooper Pedy
Elizabeth	6,718.00	4,653.00	15 Frobisher Rd	1993	Playford
Holden Hill	1,651.00	1,676.00	2A Sudholz Rd Holden Hill	1987	Pt Adelaide/Enfield
Kadina	200.00	200.00	58 Graves St Kadina SA 5554 PT	1961	Cooper Coast
Kingscote	62.00	54.00	31 Dauncey St Kingscote SA 5223 PT LT	1961	Kangaroo Island
Leigh Creek	69.00	69.00	Black Oak Drive Leigh Ck	Not recorded	Unincorporated SA
Maitland	78.00	78.00	26 Elizabeth St Maitland SA 55	1973	Yorke

¹¹² Please note that the courts also lease sites under Public Private Partnership, built by Plenary Justice, at Berri, Port Pirie, Port Lincoln and Victor Harbor.

OFFICIAL

Asset	External Building area m ²	Internal Building area m ²	Property Description	Year of Construction	Location (Local Government Area)
Millicent	120.00	120.00	48 George St Millicent SA 5280 LT	1955	Wattle Range
Mt Barker	287.00	237.00	LT 51 (37) Hutchinson St Mount Barker	1890	Mt Barker
Mt Gambier	2,109.00	1,777.00	41 Bay Rd Mount Gambier	1975	Mt Gambier
Murray Bridge	588.00	568.00	9 Bridge St Murray Bridge SA	1963	Murray Bridge
Naracoorte	221.00	185.00	54-56 Smith St Naracoorte	1949	Naracoorte/Lucindale
Peterborough	109.00	86.00	2 Jervois St Peterborough SA	1892	Peterborough
Pt Adelaide	5,457.00	4,161.00	244-260 St Vincent St	1991	Pt Adelaide/Enfield
Pt Augusta	2,341.00	2,341.00	4-20 Flinders Tce Pt Augusta 5700	2007	Pt Augusta
Samuel Way	26,599.00	17,937.00	Victoria Square Adelaide	1983	Adelaide
Supreme Court	9,110.00	7,490.00	7 Gouger St Adelaide SA 50	1875	Adelaide
Tanunda	322.00	273.00	40 Murray St Tanunda SA 53	1967	Barossa
Waikerie	132.00	132.00	Crush Tce Waikerie	1980	Loxton/Waikerie
Whyalla	863.00	504.00	1 Whitehead St Whyalla SA	1950	Whyalla

Source: Data manually compiled from Buildings Registry on 22/10/2024. This data has not been validated.

Appendix 2: Numbers of courtrooms across all Courts¹¹³

Magistrates Court - Staffed Courts	Courtroom Details	
AMC	No. of Courtrooms	22
	Circuit Courts	Murray Bridge, Port Lincoln and Port Pirie/Peterborough
BERRI (Resident Magistrate)	No. of Courtrooms	2
	Circuit Courts	Waikerie
CHRISTIES BEACH	No. of Courtrooms	5
	Circuit Courts	Kingscote, Mount Barker and Victor Harbor
ELIZABETH	No. of Courtrooms	8
	Circuit Courts	Ceduna/Yalata, Kadina/Maitland and Tanunda
MOUNT GAMBIER (Resident Magistrate)	No. of Courtrooms	3
	Circuit Courts	Bordertown, Millicent and Naracoorte
MURRAY BRIDGE (Magistrate attends from AMC)	No. of Courtrooms	1
	Circuit Courts	Nil
PORT ADELAIDE	No. of Courtrooms	5
	Circuit Courts	Clare
PORT AUGUSTA (Resident Magistrate)	No. of Courtrooms	3
	Circuit Courts	APY Lands, Coober Pedy, Leigh Creek and Roxby Downs
PORT LINCOLN (Magistrate attends from Adelaide Magistrates Court)	No. of Courtrooms	2
	Circuit Courts	Nil
PORT PIRIE (Magistrate attends from Elizabeth Magistrates Court)	No. of Courtrooms	5
	Circuit Courts	Kadina/Maitland
WHYALLA (Resident Magistrate)	No. of Courtrooms	2
	Circuit Courts	Same as Port Augusta

Other Jurisdictions	Courtroom Details	
AYC	No. of Courtrooms	4
CORONERS	No. of Courtrooms	1
Higher Courts	Courtroom Details	
SUPREME COURT COMPLEX	No. of Courtrooms	9
SIR SAMUEL WAY BUILDING (Superior Courts jury trial complex)	No. of Courtrooms	20

Source: Data manually compiled from Buildings Registry on 22/10/2024. This data has not been validated.

¹¹³ Please note that not all courtrooms listed within this table are criminal courtrooms.

Appendix 3: Vulnerable witness definitions and provisions under the *Evidence Act 1929* (SA)

Under s4 of the *Evidence Act 1929*, vulnerable witness means:

- (a) a witness who is under 16 years of age; or
- (b) a witness who is cognitively impaired; or
- (c) a witness who is the alleged victim of an offence to which the proceedings relate –
 - (i) where the offence is a serious offence against the person; or
 - ii) in any other case—where, because of the circumstances of the witness or the circumstances of the case, the witness would, in the opinion of the court, be specially disadvantaged if not treated as a vulnerable witness; or
- (d) a witness who—
 - (i) has been subjected to threats of violence or retribution in connection with the proceedings; or
 - (ii) has reasonable grounds to fear violence or retribution in connection with the proceedings; or
- (e) in the case of proceedings for a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*)—a person who will only consent to being a witness in the proceedings if he or she is treated as a vulnerable witness for the purposes of the proceedings.

Under s13A of the *Evidence Act 1929*

- (1) Subject to this section, if—
 - (a) a vulnerable witness is to give evidence in criminal proceedings; and
 - (b) the facilities necessary for the special arrangements are readily available to the court and it is otherwise practicable to make the special arrangements; and
 - (c) the special arrangements can be made without prejudice to any party to the proceedings, the court must, on application under this section, order that special arrangements be made for taking the evidence of the witness
- (2) Without limiting the kind of order that may be made under this section, the court may make 1 or more of the following orders:

(a) an order that the evidence be given outside the trial court and transmitted to the trial court by means of closed circuit television;

(b) an order that the evidence be taken outside the trial court, and that an audio visual record of the evidence be made and replayed in the trial court;

(c) an order that a screen, partition or one-way glass be placed to obscure the view of a party to whom the evidence relates or some other person;

(d) an order that a defendant be excluded from the place where the evidence is taken, or otherwise be prevented from directly seeing and hearing the vulnerable witness while giving evidence;

(e) an order that the evidence be taken in a particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the vulnerable witness or minimise the witness's embarrassment or distress, including (for example)—

(i) that the witness be accompanied by a relative, friend or other person, or by a canine court companion, for the purpose of providing emotional support; and

(ii) if the witness has a physical disability or cognitive impairment—that the evidence be taken in a particular way (to be specified by the court) that will, in the court's opinion, facilitate the taking of evidence from the witness or minimise the witness's embarrassment or distress (including, if the witness has complex communication needs, with such communication assistance as may be specified by the court); and

(iii) that extra allowance be made for breaks during, and time to be given for, the taking of evidence; and

(iv) that, while the evidence is being taken, the judge and any lawyer present in the court not wear a wig or gown (or both).

(3) Special arrangements made under this section may relate to the vulnerable witness's evidence as a whole or to particular aspects of the witness's evidence, such as cross-examination and re-examination.

Appendix 4: Case Study – District Court – Impact of court infrastructure on victim's ability to engage in trial proceedings

■■■* is the complainant in a criminal trial at the District Court for a strangulation offence. She is not able to use a VWS but has been provided with the option to use a physical screen in the courtroom. The defendant is her ex-partner ■■■ who she is no longer living with. ■■■ has shared with the specialist domestic and family violence worker she is engaged with that she is very frightened of ■■■ and his physical presence causes her to experience debilitating anxiety attacks. She does not have an IO against him.

When ■■■ attends the trial, she and ■■■ are waiting outside the same courtroom. While there is the expectation that ■■■ should not approach her, it is a shared open space and Sheriff's Officers do not have ongoing oversight of what is happening in the waiting area.

■■■ is able to stand at a distance from ■■■ within her view and stare at her. While she is accompanied by a court support officer, ■■■ still becomes extremely distraught.

When ■■■ is called to give evidence, she is disorientated and struggles to speak coherently. This results in further delays to the trial's proceedings.

**The case study presented, while based on real experiences of court users, are completely fictionalised and the names provided are not of real court users.*

Appendix 5: Case Study – District Court – Limitations of vulnerable witness suites located in Court buildings

██████████ is a young person who is currently involved in criminal proceedings against her uncle, ██████████. She is the complainant in a sexual violence matter and, as she is █ years old, she can use a vulnerable witness suite to give evidence. In theory, this should allow ██████████ to engage in the trial without any contact with ██████████

Through his solicitor, ██████████ is aware of the date ██████████ is giving evidence as it is part of the timeline of the trial. When ██████████ arrives at the court building, ██████████ and one of his friends are loitering outside of the court building. They do not approach her but watch her as she enters the building to intimidate her.

The level of distress caused by ██████████ presence makes ██████████ incapable of providing evidence. ██████████ mental state following this interaction prevents her from being involved in the trial, and a mistrial is called.

**The case study presented, while based on real experiences of court users, are completely fictionalised and the names provided are not of real court users.*

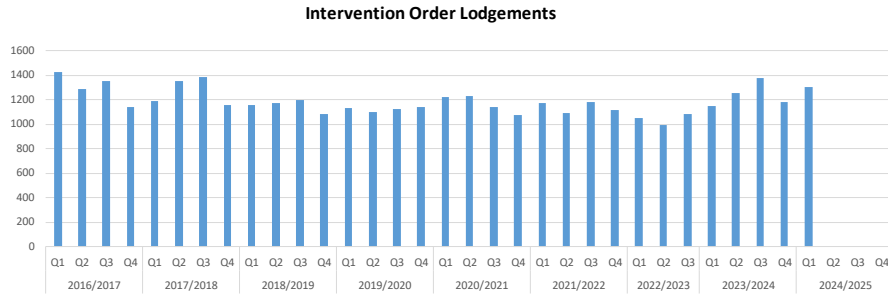
Appendix 6: List of South Australian DFSV inquests to date (2011 - 2024)

Please note that the inquests listed are in no particular order. Further information on the findings of these coronial findings can be found at: <https://www.courts.sa.gov.au/court-decisions/coroners-findings/>

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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Appendix 7: Data on DFSV related intervention orders and breaches provided for 2016-2024 financial years

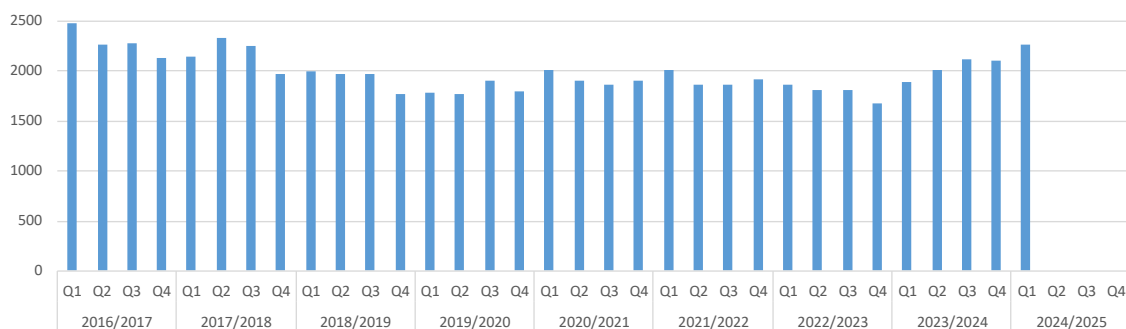
Note: the following data is provided publicly on [the CAA website](#) under the section 'Intervention Orders'. The statistics provided on the CAA website provide statistics on IO lodgements, IOs issued and number of breaches found provided for the period 2016-24. The data is sourced from the CAA Electronic Management System and was extracted on 9/10/2024.



		POLICE ISSUED INTERVENTION ORDERS		APPLICATION TO COURT FOR INTERVENTION ORDER - POLICE		APPLICATION FOR INTERVENTION ORDER - NON POLICE		APPLICATION TO REGISTER FOREIGN ORDERS	NOT IDENTIFIED ORDERS	APPLICATION TO VARY / REVOKE AN INTERVENTION ORDER	TOTAL
		DV	Non-DV	DV	Non-DV	DV	Non-DV	Not Identified	Not Identified	Not Identified	
2016/2017	Q1	883	51	156	61	31	31	13		199	1425
	Q2	793	38	125	54	37	28	9		207	1291
	Q3	771	62	138	64	58	26	11		219	1349
	Q4	628	61	128	64	43	33	7		178	1142
	Total	3075	212	547	243	169	118	40		803	5207
2017/2018	Q1	718	57	112	51	29	27	7		191	1192
	Q2	832	59	120	66	52	43	1		177	1350
	Q3	848	69	110	51	67	49	0		188	1382
	Q4	681	67	106	35	41	43	0		184	1157
	Total	3079	252	448	203	189	162	8		740	5081
2018/2019	Q1	703	37	83	36	63	47	0		184	1153
	Q2	751	44	93	43	57	47	0		142	1177
	Q3	785	42	84	34	56	36	0		157	1194
	Q4	716	27	76	50	54	48	0		116	1087
	Total	2955	150	336	163	230	178	0		599	4611
2019/2020	Q1	695	35	86	38	54	47	0		181	1136
	Q2	728	28	70	40	40	42	0		150	1098
	Q3	765	36	61	24	60	43	1		138	1128
	Q4	775	28	72	28	71	35	0		132	1141
	Total	2963	127	289	130	225	167	1		601	4503
2020/2021	Q1	760	42	78	54	70	52	0		166	1222
	Q2	787	45	67	59	81	44	1		148	1232
	Q3	727	42	59	35	76	49	1		148	1137
	Q4	684	31	55	19	76	55	1		152	1073
	Total	2958	160	259	167	303	200	3		614	4664
2021/2022	Q1	707	56	56	43	82	44	1		184	1173
	Q2	736	28	46	40	58	57	2		122	1089
	Q3	760	41	58	43	93	56	1		128	1180
	Q4	706	41	48	44	86	65	0		128	1118
	Total	2909	166	208	170	319	222	4		562	4560
2022/2023	Q1	724	33	38	24	86	55	0		94	1054
	Q2	729	44	40	31	62	24	0		67	997
	Q3	768	35	30	29	93	36	1		95	1087
	Q4	631	40	52	23	66	35	1		108	956
	Total	2852	152	160	107	307	150	2		364	4094
2023/2024	Q1	763	34	48	47	75	46	1		137	1151
	Q2	919	32	34	37	73	42	0	1	120	1258
	Q3	976	46	36	26	95	59	0		138	1376
	Q4	823	43	50	41	77	29	1		118	1182
	Total	3481	155	168	151	320	176	2		513	4966
2024/2025	Q1	906	42	53	42	89	38	1		136	1307
	Q2										0
	Q3										0
	Q4										0
	Total	906	42	53	42	89	38	1		136	1307

Legislative changes that came into effect on 25 November 2017 will result in a reduction of applications to register foreign orders. Intervention order figures refreshed to capture domestic violence (DV), non-domestic violence (Non-DV), not identified and applications to vary/revoke orders lodged.
NOTE: Foreign Intervention Orders and Unidentified Intervention Order figures are split from 2021/22 onwards

Intervention Orders Issued



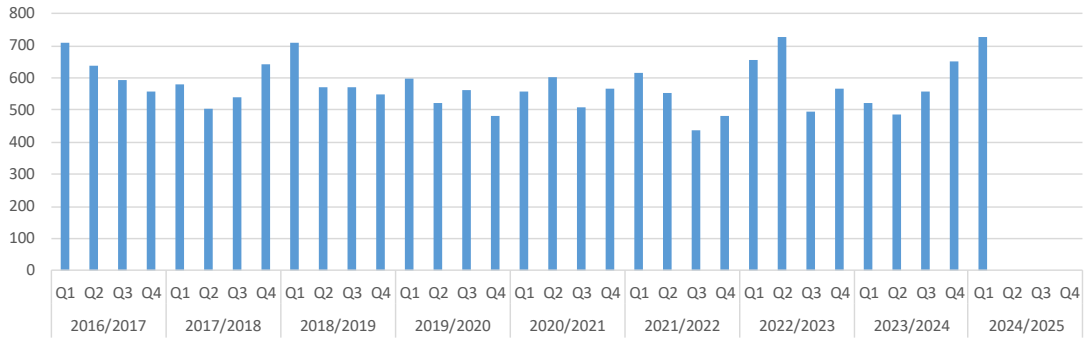
		POLICE INTERIM INTERVENTION ORDERS		INTERIM INTERVENTION ORDER		FINAL INTERVENTION ORDER		FOREIGN ORDERS & NOT IDENTIFIED	NOT IDENTIFIED ORDERS	VARIATION ORDERS	TOTAL
		DV	Non-DV	DV	Non-DV	DV	Non-DV	Not Identified	Not Identified	Not Identified	
2016/2017	Q1	883	51	571	80	651	101	13		121	2471
	Q2	793	38	517	68	643	80	10		120	2269
	Q3	771	62	534	101	578	99	7		128	2280
	Q4	628	61	476	103	635	107	9		108	2127
	Total	3075	212	2098	352	2507	387	39		477	9147
2017/2018	Q1	718	57	463	81	600	111	6		107	2143
	Q2	832	59	583	75	541	95	2		148	2335
	Q3	848	69	625	93	530	80	0		111	2245
	Q4	681	67	527	63	561	74	0		136	1973
	Total	3079	252	2198	312	2232	360	8		502	8696
2018/2019	Q1	703	37	465	71	499	93	0		132	2000
	Q2	751	44	434	80	445	108	1		112	1975
	Q3	785	42	469	63	440	73	0		100	1972
	Q4	716	27	394	49	438	82	0		66	1772
	Total	2955	150	1762	263	1822	356	1		410	7719
2019/2020	Q1	695	35	412	51	425	56	1		106	1781
	Q2	728	28	417	56	376	57	2		105	1769
	Q3	765	36	479	63	405	55	4		90	1897
	Q4	775	28	428	38	361	57	0		104	1791
	Total	2963	127	1736	208	1567	225	7		405	7238
2020/2021	Q1	760	42	421	66	514	74	13		126	2016
	Q2	787	45	414	64	377	75	7		128	1897
	Q3	727	42	440	67	417	62	16		96	1867
	Q4	684	31	413	63	501	81	3		128	1904
	Total	2958	160	1688	260	1809	292	39		478	7684
2021/2022	Q1	707	56	447	63	488	102	1	5	139	2008
	Q2	736	28	419	77	400	79	2	4	111	1856
	Q3	760	41	409	81	380	79	0	10	104	1864
	Q4	706	41	397	85	478	84	0	9	112	1912
	Total	2909	166	1672	306	1746	344	3	28	466	7640
2022/2023	Q1	724	33	350	76	512	60	0	0	113	1868
	Q2	729	44	369	42	441	80	0	0	110	1815
	Q3	768	35	387	56	422	67	1	1	67	1804
	Q4	631	40	361	42	462	60	0	0	84	1680
	Total	2852	152	1467	216	1837	267	1	1	374	7167
2023/2024	Q1	763	34	368	58	478	91	1	0	92	1885
	Q2	919	32	425	66	396	72	0	0	96	2006
	Q3	976	46	458	63	422	66	0	0	84	2115
	Q4	823	43	459	69	511	87	0	0	105	2097
	Total	3481	155	1710	256	1807	316	1	0	377	8103
2024/2025	Q1	906	42	460	49	605	90	0	0	114	2266
	Q2										0
	Q3										0
	Q4										0
	Total	906	42	460	49	605	90	0	0	114	2266

Counted by intervention order issued. Multiple interim intervention orders can be issued on one lodgement. Legislative changes that came into effect on 25 November 2017 will result in a reduction of foreign orders being registered, this figure includes intervention orders that are not identified as either domestic violence (DV), non-domestic violence (Non-DV). Intervention order figures refreshed to capture domestic violence (DV), non-domestic violence (Non-DV), not identified and variation orders issued.

Applications to revoke an intervention order which are dismissed can result in a variation order.

NOTE: Foreign Intervention Orders and Unidentified Intervention Order figures are split from 2021/22 onwards

Breach Charges Found Proved



		NUMBER OF BREACH CHARGES FOUND PROVED	
		Not Identified	
2016/2017	Q1		711
	Q2		637
	Q3		594
	Q4		558
	Total		2500
2017/2018	Q1		581
	Q2		506
	Q3		538
	Q4		642
	Total		2267
2018/2019	Q1		710
	Q2		571
	Q3		573
	Q4		550
	Total		2404
2019/2020	Q1		598
	Q2		521
	Q3		562
	Q4		481
	Total		2162
2020/2021	Q1		559
	Q2		602
	Q3		507
	Q4		567
	Total		2235
2021/2022	Q1		616
	Q2		552
	Q3		435
	Q4		480
	Total		2083
2022/2023	Q1		655
	Q2		726
	Q3		494
	Q4		565
	Total		2440
2023/2024	Q1		524
	Q2		485
	Q3		559
	Q4		653
	Total		2221
2024/2025	Q1		728
	Q2		
	Q3		
	Q4		
	Total		728

Counted by charge. One defendant may have multiple charges relating to the same intervention order. One defendant may have multiple charges relating to multiple intervention orders.

Appendix 8: Case Study – Magistrates Court – Delays in referral to Abuse Prevention Program due to assessment availability

■■■■ is a 35 year-old man who was recently subject to a police-issued IO. ■■■■ has been in a relationship with his partner, ■■■■ for around six years. During that time, he has engaged in significantly coercive and controlling behaviours such as preventing ■■■■ from seeing her friends and family, calling her names, and monitoring her messages and emails. Because of ■■■■ own upbringing, ■■■■ believes it is his right as the “man” in a relationship to control how his partner lives her life. His violence towards ■■■■ has historically not involved physical assault, and his behaviour has never come to the attention of police.

The IO was issued after ■■■■ physically intimidated and verbally threatened ■■■■ during an argument over their shared car, and ■■■■ called the police. ■■■■ has since left the property to stay with family. ■■■■ tells police that she does not want ■■■■ to face any criminal charges but still feels scared of him. The IO prevents ■■■■ from having any contact with ■■■■ including by phone or electronic messaging.

■■■■ first appearance in court for this IO happens a week after it is issued. There are no criminal charges. ■■■■ does not recognise his behaviour towards ■■■■ as abusive.

The Magistrate, as a condition of the IO, orders ■■■■ to be assessed for participation in the APP. The Magistrate notes that ■■■■ participation in this program will help him to think critically about his relationships and how he behaves towards others.

■■■■ assessment for the program is delayed by six weeks, as there are limited assessment officers available to complete it. During this time, he becomes increasingly angry and frustrated with terms of the IO.

■■■■ directs this anger and frustration towards ■■■■ He attends the property she is staying at and attempts to kick in the front door when she won't speak to him. There is a struggle, and ■■■■ strikes ■■■■ across the face. The police are called by a neighbour. By the time ■■■■ ■■■■ assessed, he is facing criminal charges due to his breach of the IO, the property damage and his assault of ■■■■

**The case study presented, while based on real experiences of court users, are completely fictionalised and the names provided are not of real court users.*

Appendix 9: Intervention Orders with associated charges lodged within 10 days 2023-24
(Magistrates Court)

Associated Major Charge	2023/24
AGG-COMMIT ASSAULT-AGAINST OWN CHILD/SPOUSE-NO WEAPON	348
DAMAGE BUILDING OR MOTOR VEHICLE (NOT GRAFFITI OR UNKNOWN)	158
CHOKE, SUFFOCATE OR STRANGLE A PERSON IN A DOMESTIC SETTING	135
DAMAGE PROPERTY NOT BUILDING OR M/V (NOT GRAFFITI OR FIRE)	107
AGG-COMMIT ASSAULT-AGAINST OWN CHILD/SPOUSE-WITH WEAPON	78
AGG-ASSAULT THAT CAUSES HARM-OWN CHILD/SPOUSE-NO WEAPON	67
AGG-COMMIT ASSAULT-OTHER CIRCUMSTANCE-NO WEAPON	63
BASIC-NOT PROGRAMS-CONTRAVENE INTERVENTION ORDER TERM	58
THREATEN TO KILL OR ENDANGER LIFE - AGGRAVATED OFFENCE	49
AGG-COMMIT ASSAULT-OTHER CIRCUMSTANCE-WITH WEAPON	37
ENGAGE IN SEXUAL INTERCOURSE WITH A PERSON WITHOUT CONSENT	33
FAIL TO COMPLY WITH BAIL AGREEMENT	31
BASIC OFFENCE: DISHONESTLY TAKE PROPERTY WITHOUT CONSENT	26
BASIC-COMMIT ASSAULT	23
BASIC-NOT PROGRAMS-CONTRAVENE INTVN ORDER-2 OR MORE	23
AGG-CAUSE HARM (WITH INTENT)-AGAINST OWN CHILD/SPOUSE	22
AGG-ASSAULT THAT CAUSES HARM-OTHER CIRCUMSTANCE-NO WEAPON	20
SERIOUS CRIMINAL TRESPASS-RESIDENCE OCCUPIED-AGGRAVATED	17
AGG-ASSAULT THAT CAUSES HARM-OWN CHILD/SPOUSE-WITH WEAPON	16
BASIC-NOT PROGRAMS-CONTRAVENE INTVN ORDER-VIOLENCE	16
ASSAULT-WORKER OTHER/UNKNOWN	13
AGGRAVATED: DISHONESTLY TAKE PROPERTY WITHOUT CONSENT	10
STALKING - BASIC OFFENCE	10
TRESPASS IN RESIDENCE (AGGRAVATED OFFENCE)	10
AGGRAVATED SERIOUS CRIMINAL TRESPASS RESIDENCE -OCCUPIED UNK	9
AGG-THREAT TO CAUSE HARM TO ANOTHER-OTHER CIRCUMSTANCE	8
AGGRAVATED-NOT PROGRAMS-CONTRAVENE INTVN ORDER-2 OR MORE	7
STALKING - AGGRAVATED OFFENCE	7
ADULT, SEXUAL ABUSE OF A CHILD	6
AGG-ASSAULT THAT CAUSES HARM-OTHER CIRCUMSTANCE-WITH WEAPON	6
ARSON OF BUILDING OR MOTOR VEHICLE	6
ENDANGER LIFE - AGGRAVATED OFFENCE	6
INDECENTLY ASSAULT A PERSON - AGGRAVATED OFFENCE	6
AGG-CAUSE HARM (WITH INTENT)-OTHER CIRCUMSTANCE	5
AGGRAVATED-NOT PROGRAMS-CONTRAVENE INTVN ORDER-VIOLENCE	5
BASIC-ASSAULT THAT CAUSES HARM	5
AGG-CAUSE SERIOUS HARM (WITH INTENT)-AGAINST OWN CHILD/SPOUS	4
AGG-RECKLESSLY CAUSE HARM TO ANOTHER-OWN CHILD/SPOUSE	4
ADULT, MAINTAIN UNLAWFUL SEXUAL RELATIONSHIP WITH CHILD	3
AGG-ACT LIKELY TO CAUSE HARM-OTHER CIRCUMSTANCE	3

OFFICIAL

Associated Major Charge	2023/24
AGGRAVATED ASSAULT (NO WEAPON) AGAINST CHILD OR SPOUSE	3
AGG-RECKLESSLY CAUSE HARM TO ANOTHER-OTHER CIRCUMSTANCE	3
CARRY AN OFFENSIVE WEAPON	3
DETAIN PERSON TO COMMIT INDICTABLE OFFENCE-AGGRAVATED	3
DRIVE OR USE MOTOR VEHICLE WITHOUT CONSENT	3
ENGAGE IN SEXUAL INTERCOURSE AFTER CONSENT WITHDRAWN	3
FALSE IMPRISONMENT	3
SERIOUS CRIMINAL TRESPASS-RESIDENTIAL-BASIC OFFENCE	3
THREATEN TO DAMAGE PROPERTY (AGGRAVATED OFFENCE NOT ARSON)	3
TRESPASSING-IN ANY OTHER CASE	3
UNLAWFULLY ON PREMISES	3
AGGRAVATED: DISHONESTLY DEAL WITH PROPERTY WITHOUT CONSENT	2
BAIL AUTHORITY-VARY CONDITIONS OF OR REVOKE A BAIL AGREEMENT	2
DISTURBING THE PEACE	2
DRIVE WITH EXCESS BLOOD ALCOHOL	2
ENDANGER LIFE - BASIC OFFENCE	2
INDECENT BEHAVIOUR	2
KNOWINGLY DISTRIBUTE INVASIVE IMAGE OF PERSON OVER 17 YEARS	2
NON-AGGRAVATED - POSSESS ANY OTHER FIREARM WITHOUT LICENCE	2
PROHIBITED ACT WITH HUMAN BIOLOGICAL MATERIAL-ANY OTHER CASE	2
SERIOUS CRIMINAL TRESPASS (NON-RESIDENTIAL) BASIC OFFENCE	2
SUPPLY OR ADMINISTER CONTROLLED DRUG TO CHILD	2
UNAUTHORISED PERSON DRIVE MOTOR VEHICLE ON ROAD	2
UNLAWFUL SEXUAL INTERCOURSE WITH PERSON UNDER 17 YEARS	2
ACT TO CAUSE SERIOUS HARM - AGGRAVATED OFFENCE	1
ADULT, SEXUAL ABUSE OF A CHILD PRESUMPTIVE DISQUAL OFFENCE - CSPP	1
AFFRAY - AGGRAVATED OFFENCE	1
AGAINST DIRECTION, COMMUNICATE WITH SPECIFIED YOUNG PERSON	1
AGAINST WRITTEN DIRECTION, WITHOUT REASONABLE EXCUSE, BE IN COMPANY OR OTHERWISE ASSOCIATE WITH SPECIFIED YOUNG PERSON	1
AGG-CAUSE SERIOUS HARM (WITH INTENT)-AGAINST OWN CHILD/SPOUS ATTEMPTED	1
AGG-CAUSE SERIOUS HARM (WITH INTENT)-OTHER CIRCUMSTANCE	1
AGG-COMMIT ASSAULT-WORKER OTHER/UNKNOWN	1
AGGRAVATED- ACQUIRE/OWN/POSSESS RESTRICTED FIREARM MECHANISM	1
AGGRAVATED-NOT PROGRAMS-CONTRAVENE INTERVENTION ORDER TERM	1
AGG-RECKLESSLY CAUSE SERIOUS HARM-AGAINST OWN CHILD/SPOUSE	1
AGG-RECKLESSLY CAUSE SERIOUS HARM-OTHER CIRCUMSTANCE	1
AGG-THREAT TO CAUSE HARM TO ANOTHER-WORKER OTHER/UNKNOWN	1
ASSAULT-WORKER POLICE	1
BASIC-CAUSE HARM (WITH INTENT)	1
BASIC-THREAT TO CAUSE HARM TO ANOTHER	1
BEHAVE IN OFFENSIVE OR DISORDERLY MANNER - LICENSED PREMISES	1
BLACKMAIL (BASIC OFFENCE)	1
CAUSE SERIOUS HARM BY DANGEROUS DRIVING - BASIC OFFENCE	1

OFFICIAL

Associated Major Charge	2023/24
COMMIT ASSAULT	1
COMMIT THEFT USING FORCE (AGGRAVATED OFFENCE)	1
COMMUNICATE TO MAKE CHILD AMENABLE TO SEXUAL ACTIVITY-BASIC	1
COMPEL PERSON TO ENGAGE IN SEXUAL INTERCOURSE WITH A PERSON	1
CONTRAVENE A CONDITION OF A PROVISIONAL LICENCE - PCA	1
CONTRAVENE A PROVISION OF THE CODE OF PRACTICE - CATEGORY A	1
CONTRAVENE A PROVISION OF THE CODE OF PRACTICE - CATEGORY C	1
DETAIN PERSON FOR RANSOM OR AS HOSTAGE - AGGRAVATED OFFENCE	1
DETAIN PERSON TO COMMIT INDICTABLE OFFENCE-BASIC OFFENCE	1
DISORDERLY BEHAVIOUR	1
DRIVE AT DANGEROUS SPEED	1
DRIVE DANGEROUSLY TO ESCAPE POLICE PURSUIT-AGGRAVATED	1
DRIVE DANGEROUSLY TO ESCAPE POLICE PURSUIT-BASIC OFFENCE	1
DRIVE UNDER DISQUALIFICATION OR SUSPENSION	1
DRIVE WITH PRESCRIBED ALCOHOL WITH A CHILD UNDER 16 PRESENT	1
DUE CARE - BASIC OFFENCE	1
ENGAGE IN SEXUAL INTERCOURSE WITH A PERSON WITHOUT CONSENT ATTEMPTED	1
GROSSLY INDECENT ACT	1
HAVE SEXUAL INTERCOURSE WITH A PERSON UNDER 14 YEARS	1
HAVE SEXUAL INTERCOURSE WITH CLOSE FAMILY MEMBER	1
INDECENTLY ASSAULT A PERSON - BASIC OFFENCE	1
MAKING OFF WITHOUT PAYMENT	1
MURDER	1
NATURAL PERSON-INSTALL TRACKING DEVICE (VEHICLE),NO CONSENT	1
NON-AGGRAVATED - POSSESS CAT C,D,H FIREARM WITHOUT LICENCE	1
PERSON-RECORD PRIVATE CONVERSATION (PERSON IS NOT A PARTY)	1
POSSESS EQUIPMENT TO USE WITH CONTROLLED DRUG (NOT CANNABIS)	1
POSSESS PRESCRIPTION DRUG (NOT BEING DRUG OF DEPENDENCE)	1
PROCURE CHILD FOR SEXUAL ACTIVITY (BASIC OFFENCE)	1
PROHIBITION, FAIL NOTIFY REGISTRAR OF CHANGE OF ADDRESS	1
RESIST POLICE	1
SERIOUS CRIMINAL TRESPASS-NON-RESIDENTIAL-AGGRAVATED OFFENCE	1
STALK PERSON ON ACCOUNT OF DISCHARGE OF OFFICIAL DUTIES	1
STALKING IN CONTRAVENTION OF ORDER - AGGRAVATED OFFENCE	1
STALKING IN CONTRAVENTION OF ORDER - BASIC OFFENCE	1
SUPPLY OR ADMINISTER DRUG (NOT CANNABIS) TO ANOTHER PERSON	1
THREATEN TO DAMAGE PROPERTY (AGGRAVATED BY ARSON)	1
THREATEN TO DAMAGE PROPERTY (BASIC OFFENCE)	1
TRAFFIC (TYPE UNKNOWN) IN A CONTROLLED DRUG - BASIC	1
USE OR HAVE POSSESSION OF A PROHIBITED WEAPON	1
	1578

Source: CAA Electronic Court Management System, data extracted on 31/10/2024

Appendix 10: RASA and KWY referrals and completions across 2019-2024

Table 1: Referrals to RASA and KWY programming 2019-2024*

Program	Total number of referrals
RASA – 12 Week Group	205
RASA – 24 Week Group	755
RASA – Individual Counselling	129
Total RASA referrals across all programs:	1,089
KWY – 12 Week Course	106
KWY – 3 Day Course	162
Total KWY referrals across all programs:	168

Table 2: Completions of RASA and KWY programming 2019-2024

Program	Total number of completions
RASA – 12 Week Group	120
RASA – 24 Week Group	258
RASA – Individual Counselling	79
Total RASA completions across all programs:	457
KWY – Adelaide 1:1 Counselling ¹¹⁴	37
KWY – Whyalla Group	42
KWY – Port Augusta Group	69
Total KWY completions across all programs:	148

* please note that RASA commenced service provision in January 2022.

Source: CAA Electronic Court Management System, data extracted on 9/10/2024.

¹¹⁴ Data on referrals to KWY 1:1 is not able to be provided by the CAA.

Appendix 11: Abuse Prevention Program compliance with NOSPI standards

NOSPI Standard	Evidence of APP compliance
Standard 1: Women and their children's safety is the core priority of all perpetrator interventions	Partners and former ex-partners of APP participants are offered the opportunity to connect with WSCP, a partner safety contact program that provides ongoing risk assessment and support.
Standard 2: Perpetrators get the right interventions at the right time	Perpetrators are referred for assessment at the earliest opportunity within the court process which is at their first appearance for their interim IO, usually within eight days of the alleged incident. The APP has tailored streams available that are suitable for perpetrators at multiple levels of risk, including those making contact with the justice system for the first time.
Standard 3: Perpetrators face justice and legal consequences when they commit violence	A refusal to be assessed for the APP or repeat non-attendance of the program can constitute as a breach of an IO or bail conditions, resulting in a breach of the IO being reported to the Police. The court will also be notified of the failure to attend the program, and men are terminated from the program by the court due to ongoing non-attendance at the program.
Standard 4: Perpetrators participate in programs and services that enable them to change their violent behaviours and attitudes	Perpetrators are mandated to attend and participate in a MBCPs where they must demonstrate accountability and take responsibility for their behaviours and attitudes. Men involved in the APP are allocated to the stream that most fits their current needs and capacity for change. Culturally adapted versions of the program are provided by KWY.
Standard 5: Perpetrator interventions are driven by credible evidence to continuously improve.	The APP is undergoing a formal program review through a partnership between AGD and CAA. The program was also developed using evidence-based psycho-educational and therapeutic strategies.

Appendix 12: Further information on Treatment Intervention Court streams and their conditions

The information provided in the following table (excluding information on the Gambling Intervention Program) was sourced from the Duty Solicitor Handbook provided by the Legal Services Commission South Australia, available at: <https://lsc.sa.gov.au/dsh/ch04s11.php> Information on the Gambling Intervention Program was provided internally by CAA staff.

Treatment Intervention Court Stream	Conditions associated with stream
Six-month substance dependency stream	<ul style="list-style-type: none"> • Release on bail; • Supervised drug screening tests at least twice a week for the first two months of the program, and then at least once a week for the remaining four months; • Attendance at court fortnightly for the first two months of the program, and then monthly for the remaining four months; • Weekly or fortnightly contact with a Program Supervisor; • Referral where appropriate to a drug treatment service or specific program.
Six-month mental impairment stream	<ul style="list-style-type: none"> • Release on bail; • Attendance at court bi-monthly; • Contact with a Case Manager to arrange access to mental health and/or disability services; • Support to attend treatment appointments; • Support from a Case Manager to address any psycho-social issues such as housing, debt, relationships; • Reports are made to the court of the defendant's attendance at and participation in any treatment options.

Treatment Intervention Court Stream	Conditions associated with stream
Six-month co-morbidity stream	<ul style="list-style-type: none"> • Release on bail; • Attendance at court bi-monthly; • Contact with a Case Manager to arrange access to mental health and/or disability services; • Support to attend treatment appointments; • Support from a Case Manager to address any psycho-social issues such as housing, debt, relationships; • Reports are made to the court of the defendant's attendance at and participation in any treatment options.
12-month stream (only offered at Adelaide Magistrates Court)	<ul style="list-style-type: none"> • Release on home detention bail with electronic monitoring for the first three months of the program, then bail reduced to night curfew for the remaining months; • Supervised drug screening tests at least three times a week for the first three months of the program, then at least twice a week for the next six months. For the final three months, drug testing is random. A defendant can have their drug screening test results confirmed by laboratory analysis- this will incur a fee; • Attendance at court every fortnight for the first three months of the program, and then monthly for the remaining months; • Participation in specialised individual and group treatment programs especially designed to address the nexus between drug use and offending; • The development of a tailored case management plan tailored to the defendant's needs.

Treatment Intervention Court Stream	Conditions associated with stream
<p>Six-month Gambling Intervention Program</p>	<ul style="list-style-type: none"> • Release on bail; • Attendance at Court bi-monthly; • Regular contact with Program Supervisor; • Referral to Statewide Gambling Therapy Service; • Participation in either inpatient or outpatient treatment followed by outpatient follow up; • One-off financial counselling and relapse prevention; • Referrals to other services to address needs identified at the assessment.

Appendix 13: Further information on proposed CAA pilot – holistic perpetrator intervention addressing substance misuse and mental health disorders

PILOT PROGRAM PROPOSAL – Perpetrator intervention addressing substance misuse and mental health disorders	
Intended cohort:	Male defendants of IPV against a current or former female partner, with an IO and associated criminal offending who are aged 18 and over.
Program location and capacity:	Available only in metropolitan area, with capacity to expand to regional areas following evaluation. The initial program capacity is restricted to 40 participants.
Program description:	<p>An intervention program for defendants of IPV that:</p> <ul style="list-style-type: none"> • Recognises and responds to the relationship between perpetration of IPV, substance misuse, and mental health disorders. • Uses a holistic approach that considers the needs of women and children victim-survivors, as well as the needs of defendants in terms of addressing co-occurring factors that increase the risk of IPV. • Holds defendants accountable for their use of violence and coercive control, and mandates participation in a program that will address the co-occurring factors that contribute to an individual's use of violence, (substance misuse, mental health disorders, low gender-equitable beliefs).
Program rationale:	In order to achieve increased safety for women and children who experience domestic violence, defendants must be held accountable in a holistic sense which aims to achieve sustained change. This proposal suggests a holistic intervention program which addresses men's use of violence and coercive control in relationships, the co-occurring factors that increase the likelihood and severity of IPV, and intensive judicial supervision which is an important component of intervention programs in terms of recidivism reduction.

PILOT PROGRAM PROPOSAL – Perpetrator intervention addressing substance misuse and mental health disorders
Program components:
IPV:

Participation in a program to address the use of violence in relationships by focusing on:

- Level of gender-equitable beliefs
- The impact of IPV on women and children
- Learning new adaptive and prosocial ways of behaving in relationships

Substance misuse intervention:

Participation in a program to address substance use and the underlying factors driving that use (e.g., previous trauma, mental health disorder).

- Intensive supervised and randomised drug screening to monitor substance use.
- Relapse prevention program.

Mental health:

Engagement with appropriate service providers to idiosyncratically address mental health disorders (e.g. GP, community mental health service, psychologist, psychiatrist).

Child Protection:

Participation in a parenting program for education about the impact of IPV on children and to learn parenting skills.

Defendant accountability:

Intensive judicial supervision of defendant engagement with, and progress in the program.

PILOT PROGRAM PROPOSAL – Perpetrator intervention addressing substance misuse and mental health disorders	
<p>Key program partners:</p>	<p>A multi-agency approach to risk management for women and their children which would involve:</p> <ul style="list-style-type: none"> • CAA providing case management and judicial supervision. • SAPOL / ODPP as partners in a therapeutic jurisprudence model. • Women’s specialist domestic violence support service providing support for women named as protected persons on IOs. • DCP providing oversight of child protection reports. • AOD service provider to address co-occurring substance dependence. • Mental health service provider relevant to identified individual defendant need. This may be a community service provider, or an individual practitioner such as a psychologist, psychiatrist, or GP.
<p>Alignment with National Plan End Violence Women and Children 2022-2032</p>	<p>The proposed model aligns with Response objective 1 and 4 of the National Plan – ensure frontline services provided by states and territories are coordinated, integrated and appropriately resourced with a skilled and qualified workforce to support all victim-survivors; and improve justice responses to all forms of gender-based violence.</p>

Appendix 14: Case study – Youth Court – Lack of perpetrator intervention programs for young people using violence

██████ is 15 years old and is involved in criminal proceedings at the Youth Court for charges of physical assault and property damage against his sister, ██████ and mother, ██████. He is suspected to have complex post-traumatic stress disorder due to witnessing and experience DFV as a child and has a lot of difficulty regulating his emotions.

The IO against ██████ means he cannot share a home with his mother and sister. He is currently living with his father, and has expressed significant concerns about this living arrangement, such as not having a proper bed to sleep in and being exposed to adults using drugs.

██████ knows of these concerns and is very worried. However, ██████ knows that ██████ is frightened of her older brother and wants to protect her from further violence.

██████ knows his behaviour is not right, and he is worried about ‘turning out like his Dad’. He struggles to seek mental health support, and he is too young to access services for men who are using violence and want to change their behaviour.

██████, ██████, ██████ Dana are referred to an IO mediation conducted by the Conferencing Unit of the Youth Court. ██████ participates in the mediation, and with the consent of all those present he agrees to modify his behaviour and attend counselling, he can live with his Mum and sister again. The matter goes back to court, the IO is updated and ██████ returns home.

For the first month and a half, ██████ is able to comply with the order. He goes to see a counsellor at Headspace National Youth Mental Health Foundation and he tries to teach himself better emotional regulation skills. However, the counselling he receives is unable to address the issues caused by ██████ underlying trauma, and he starts to lapse back into old coping mechanisms and behaviours. Eventually, he assaults his sister again and receives another criminal charge for breaching the IO.

**The case study presented, while based on real experiences of court users, are completely fictionalised and the names provided are not of real court users.*

Appendix 15: Further conditions that may be imposed as part of a bail agreement

The information provided below was sourced from the Duty Solicitor Handbook provided by the Legal Services Commission South Australia, available at:

<https://lsc.sa.gov.au/dsh/ch08s07.php>

Conditions of Bail – *Bail Act 1985*

Under the *Bail Act 1985*, a bail authority may require the applicant to surrender any firearm, ammunition or part of a firearm they own or possess [s 11A]. The maximum penalty for failing to comply with this direction is \$10,000 or imprisonment for 2 years [s 11A(2)].

A bail authority may further impose any of the following conditions on a bail agreement [s 11(1d), (2)]:

- residence at a specified address [s 11(2)(a)(i)]
- home detention [s 11(2)(a)(ia)]
- supervision by a community corrections officer [s 11(2)(a)(iii)]
- conditions for the physical protection of a victim [s 11(2)(a)(ii) and s 11(2a)]
- regular reporting to police [s 11(2)(a)(iv)]
- surrender of any passports [s 11(2)(a)(v)]
- a curfew [s 11(2)(a)(vi)]
- written assurances [s 11(2)(b)]
- forfeiture [s 11(2)(c) and s 19]
- cash surety [s 11(2)(d)]
- guarantors [s 11(2)(e)]
- security provided by guarantor [s 11(2)(f)]
- any other conditions regarding the applicant's conduct [s 11(2)(a)(vi)].

Appendix 16: Case study – Youth Court – Criminalisation of behaviours of youths under the guardianship of the Department for Child Protection

█████ is 15 years old. He was placed under the long-term guardianship of the Chief Executive of the DCP at age █████ █████ was removed from the care of his parents due to chronic neglect and exposure to their substance abuse and DFSV. As a result, he has developed complex post-traumatic stress disorder and several s issues. It is also suspected that █████ may be autistic and have attention deficit disorder, although he has not been formally evaluated.

Following █████ removal, he resided in several foster care placements. However, these placements were ultimately ended due to █████ challenging behaviors. He has resided in a residential care placement since he was aged █████

█████ is brought before the Youth Court on an application for bail, after having been kept in custody overnight at Kurlana Tapa Youth Justice Centre (Kurlana Tapa). He is charged with property damage. These charges relate to an incident the previous day when █████ cracked a window in his residential care facility by throwing a shoe at it, which occurred when █████ had an argument with his youth worker.

█████ is granted bail to return to the residential care facility. A curfew is imposed between the hours of 7pm to 7am. Sam is returned to his residential care facility on the same day, but leaves shortly after and does not return by 7pm. The Supervisor at the placement contact SAPOL and filed a Missing Person Report.

█████ is arrested by SAPOL at 2am the next morning in the Adelaide CBD and charged with breaching his bail agreement. █████ is taken to Kurlana Tapa for the night. He receives bail the next morning by the Youth Court to reside at the facility.

These are the latest in numerous charges brought against █████ for similar offences since he entered residential care. He is presently subject to five concurrent bail agreements in relation to pending charges for various incidents, mainly relating to property damage.

When █████ reaches adulthood, he already has a significant criminal record. This makes it more difficult for him to apply for some jobs that require information on spent convictions. It also means that if he comes into contact with the criminal justice system as an adult, this information could be used to sentence him for future crimes.

**The case study presented, while based on real experiences of court users, are completely fictionalised and the names provided are not of real court users.*



11 November 2024

Ms Natasha Stott Despoja AO
Royal Commissioner
Royal Commission into Domestic, Family and
Sexual Violence

Email: Royal CommissionDFSV@sa.gov.au

Dear Ms Stott Despoja AO

I write to lend my support to the submission made to the Royal Commission by the Courts Administration Authority and to make the following observations.

I commence by making the point that substantial change is required in the way criminal charges for offences of domestic, family, and sexual violence are conducted. Criminal charges should be finalised more quickly; trials must be fair, trials should be shorter; all participants should feel safe throughout the court process; and the risk of a retrial should be minimised. These goals may be summarised as expedition, efficiency, fairness and safety.

Charges for offences of violence, of the kind which are the subject of the Commission's inquiry, take up a substantial proportion of the resources of the Courts in their criminal jurisdictions. Trials for the more serious of those offences are held in the District Court. Trial by jury necessarily lengthens the trial process. On the other hand, trial by judge alone, for which elections are made with increasing frequency, places a significant judgment writing burden on the Judge. Appeals from convictions and sentences comprise a significant part of the Court of Appeal's workload.

Long delays between charging and final verdict cause participants, including complainants, witnesses, and their families, much distress. Their recovery can only properly commence after the charges are finally determined. It is critically important that court practices are adapted and developed which ameliorate that distress.

It also serves a broader public interest that allegations of domestic, family, and sexual violence are dealt with expeditiously. The commission of crimes of this kind unsettles the community. Their prompt determination, and their stigmatisation by conviction, if found proved, in itself has a deterrent effect, even before sentence is imposed. On the other hand, whilst their resolution is delayed, not only does the particular charge remain contested, so too does the very extent of domestic and sexual violence in our community.

The trial process itself can distress participants, particularly witnesses and their families. Some legislative enhancement of the powers of the presiding Judge to control the proceedings may be necessary. The Australian Law Reform Commission inquiry into Justice Responses to Sexual Violence might make recommendations in that respect. I

address the need for training of judges and legal practitioners in this respect below.

At the same time, trials must be conducted fairly. Judges necessarily take care to avoid errors in the conduct of the trial which may result in a successful appeal and a new trial. Retrials cause further delay and place additional demands on the resources of the Court. It is necessary that both prosecution and defence counsel also discharge their ethical obligations to avoid errors of that kind, and that they understand the emotional trauma which may be caused by their failure to do so.

To achieve the goals which I have identified, practical and cultural change is necessary. The judiciary, legal profession, criminal justice agencies and victim and witness support services should be encouraged to work together to change the practices and procedures of criminal justice agencies and the courts to achieve those objectives.

The most obvious vehicle to drive that change is training and education through the delivery of professional development programs. The National Judicial College of Australia has developed an effective program for judges on managing sexual assault trials. Programs of that kind can be further developed, enhanced and strengthened. Similar programs for police and legal practitioners should also be provided. An important focus of the training should be to give insights into the effects of current investigative and court practices on participants, and to encourage the innovative design of alternate approaches.

The problematic question of how to ameliorate the harm caused by some cross-examinations of complainants, but at the same time ensure a fair trial, is perhaps best addressed by training sessions for both judges and legal counsel. Programs which allow simulated hearings and guidance on alternative ways to examine and cross-examine complainants as well as offering guidance on when judicial intervention is justified may be particularly useful.

I also support the view that charges of domestic, family, and sexual violence should be more intensely and innovatively case managed if we are to achieve more desirable outcomes. I give some examples. There are anecdotal accounts of long delays of over 12 months in fixing an answer charge date, to allow time for complex DNA forensic reports to be provided. Similar delays are experienced in extracting evidence from electronic devices. Flexibility is needed to allow indictable charges to proceed to be set down for trial in the District Court whilst awaiting the results of forensic investigations. However, at the same time, the defence should be given an opportunity and the resources to participate in, or monitor and review, the forensic analysis in real time so that it is in a position to call evidence challenging the prosecution evidence without further delaying the trial.

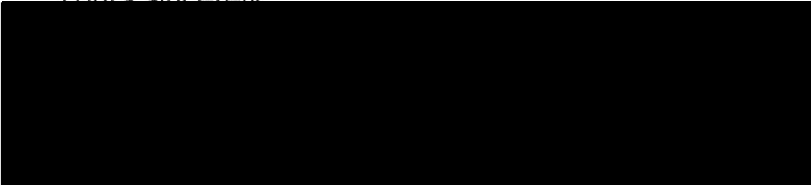
By way of further example, there are accounts of delays in trials of charges of this kind because defence applications to exclude evidence, or sever charges, are not brought within the time allowed by rules of the Court. This too, could be a focus of training programs. However, stricter enforcement of the rules may also be necessary. Legislative reform too may be needed to explicitly strike the balance between the accused's interest in a fair trial and the public interest in expedition. Ultimately, there may also be a place for taking disciplinary action against repeatedly defaulting legal practitioners.

Finally, I wish to stress the importance of evidence-based decision making in two respects. The first is that programs to prevent recidivism, or to help victims recover, should be subjected to careful evaluation to ensure the delivery of best practice programs. I have doubts about the rigor of evaluations undertaken within a single State.

Secondly, I wish to draw attention to the wealth of data in court files on the personal, medical and drug and alcohol history of offenders. The criminogenic factors to which they were exposed as children is also often documented. It is common to find that offenders were victims of similar offending in their youth. The data also includes prior offending history.

Recidivism patterns are often apparent. The immediate circumstances in which the offending occurred are also detailed. This data is now searchable electronically on the Electronic Court Management System. It is possible to develop searches using large language models which would allow a data-rich analysis by social researchers, the result of which would inform preventative and recovery strategies. I encourage the commitment of resources to make that possible.

Yours sincerely



The Honourable Chris Kourakis
Chief Justice of South Australia



DISTRICT COURT OF SOUTH AUSTRALIA

CHAMBERS OF THE CHIEF JUDGE

8 November 2024

The Honourable Natasha Stott Despoja AO
Royal Commissioner
Royal Commission into Domestic, Family and Sexual Violence
ADELAIDE, SA, 5000

By email: DHSroyalcommissionresponse@sa.gov.au

Dear Commissioner

I refer to and endorse the Courts Administration Authority (CAA) submission to the Royal Commission into Domestic, Family and Sexual Violence dated 8 November 2024.

The District Court of South Australia deals with major indictable criminal matters involving Domestic, Family and Sexual Violence (DFSV) which have been committed to the District Court for either trial or sentence. I agree that addressing the matters set out under each of the four focus areas identified by the CAA in its submissions would result in immediate improvement in the response to DFSV in South Australia.

The CAA submissions have identified some of the areas in which further infrastructure, training and support is required within the court system.

Further, the operation of the Criminal Priority Program in the District Court since May 2021 as referred to in the CAA's submissions at pages [36]-[37] and at [38] has confirmed and highlighted some of the additional supports needed both as to infrastructure and for appropriate and sufficient ongoing training for judiciary and staff when dealing with domestic, family or sexual violence matters, including dealing with vulnerable witnesses and complainants.

A further practical problem that arises is the difficulty in ensuring the availability of appropriate, accredited translators for hearings of matters involving alleged DFSV. These matters often require more than one translator at any given time, for example, a different translator for the accused and for a vulnerable witness.

Whilst the infrastructure needs are myriad, at a general level the most pressing need in the District Court includes the following:

1. A sufficient number of properly designed and maintained vulnerable witness suites in locations which avoid vulnerable witnesses, including complainants, from having incidental contact with the accused or the accused's friends or family.
2. Up to date and reliable technology for the playing of pre-recorded interviews and the playing of evidence, including at jury trials.
3. Up to date and reliable technology for recording evidence at pre-trial special hearings and for that evidence to then be played at trial, including to a jury.

The age, structure and accessibility of facilities within the Sir Samuel Way Building limits the ability for the court to ensure appropriate services and protections are provided to vulnerable witnesses and their families, and the participants in the hearings of proceedings which involve domestic, family or sexual violence.

I endorse the submissions of the CAA at pages [37]-[38] as to the gaps and the realistic opportunities for the District Court to address these gaps and to provide immediate improvement in the response to DFSV in South Australia.

Yours sincerely



Chief Judge Evans
District Court of South Australia



CORONERS COURT OF SOUTH AUSTRALIA

Coroners Court
302 King William Street
Adelaide SA 5000

7 November 2024

Natasha Stott Despoja AO
Royal Commissioner
Royal Commission into Domestic, Family and Sexual Violence

By email only: RoyalCommissionDFSV@sa.gov.au

Dear Commissioner

This letter expands upon, and should be read in conjunction with, the issues regarding the Coroners Court noted in the submission of the Courts Administration Authority (CAA) to the Royal Commission into Domestic, Family and Sexual Violence.

A significant number of deaths occur as a result of or against a background of domestic, family and sexual violence. In the majority of cases, findings as to cause of death are entered by the State Coroner without an inquest. In some cases, albeit few, inquests are held and the Coroners Court makes findings as to the causes and circumstances of those deaths and makes recommendations directed towards prevention. Between May 2011 and October 2024, there have been over 283 reviews conducted and 15 Coronial Inquests with a domestic violence context in SA. A total of 45 recommendations relating to these inquests have been released. A list of all 15 DFSV inquests completed is provided in Appendix 6.

As recognised in the CAA's submission, within the section on 'Prevention', the Coroners Court, through conducting inquests, has significant power to make recommendations that prevent further deaths due to DFSV. While a Coroner is unable to make any finding or suggestion of criminal or civil liability, they can make recommendations to government of actions that can be taken to prevent or reduce the likelihood of a similar event.

It is articulated in the CAA's submission that a number of factors impact the timeliness of DFSV related inquests. While some of these factors concern external processes that cannot be expedited, efforts to expand infrastructure, support further staffing and pursue technological innovations that improve current record management could increase the efficiency of these processes.

I note that funding for the Coroners Court infrastructure and administration is allocated from the overall Courts Administration Authority budget. It is usually necessary for specific budget bids to be made to Government for expenditures not able to be covered within the recurrent budget.

In the most recent State Budget, ongoing funding of \$1.1 million per annum (indexed) was allocated to fund an additional (third) Coroner and ancillary staff in the Coroners Court. The stated purpose of this funding was to address increases in workload and backlog of deaths requiring coronial investigation. After many years with two permanent Coroners, the Coroners Court now has a permanent judiciary of three Coroners, with three legal support teams, to deal with the investigation and inquest load arising from a substantial increase in reportable deaths in recent years. As a consequence, I anticipate a gradual reduction of the time from date to death to the date of inquest, and the backlog of inquests.

The cases which do not go to inquest are nevertheless investigated and when a decision is made not to proceed to inquest, a finding as to cause of death is made by the State Coroner and the file is closed. This is the most common administrative pathway of reported deaths. As reported in the most recent Annual Report of the State Coroner, there has been an increase of 31.76% in reportable deaths over the past five years. From time to time it is demonstrable that extra staff are required in order to administratively process the increasing numbers of cases. Funding for extra staff is not readily available. However, the bind is that even if funding is allocated by the CAA for extra administrative staff, it is almost impossible to accommodate any further staff within the present premises. This is an ongoing impediment to the streamlining of coronial processes and ensuring that bereaved families receive as early as possible a final death certificate issued by the Registry of Births Deaths and Marriages.

There is no funding allocated or presently expected to be allocated for expansion or relocation of the Coroners Court and Office accommodation, which has long been occupied beyond the capacity for which it was originally fitted out in 1998, when there was only one permanent Coroner. As was stated in the CAA submission, two rooms allocated for use of witnesses, counsel and family and friends of deceased persons during inquests have necessarily been taken up by Coroner's Office staff. There is only one quite small open waiting area immediately outside the courtroom, through which all persons using the courtroom and attending the inquest must pass. It is not uncommon for witnesses or family members to experience distress during an inquest, in which event there is simply nowhere for them to go. On one occasion recently, when a witness was distressed, the only option available to the Coroner was to adjourn the inquest for a short time and order that the courtroom be entirely cleared so the witness could remain in the courtroom to compose themselves in private. All involved in the inquest and in the public gallery therefore had to move into the single small space outside the courtroom or move down the stairs into King William Street. I have experienced visibly distressed family members having to leave the courtroom during an inquest, when I well know that there is nowhere for them to go.

The other factor contributing to the lack of available space for all aspects of the coronial process is the ongoing use of paper files, which require considerable space and which we cannot cease using until such time as the Coroner's Office has a new fully electronic case management system. To develop such a system, hopefully using the new CAA ECMS system as a base, significant funding is required and this is not presently available. Without a careful assessment, I would predict that once an electronic case management system is in place in the Coroners Office it might be possible to accommodate up to five more staff in the

present premises. Subject to other staffing requirements at the time, in all likelihood small private trauma-informed waiting and retreat spaces could immediately be reinstated outside the Coroners Court courtroom.

As noted in the CAA's submission within the section titled 'Recovery and Healing', investigations and inquests into DFSV related deaths present an important opportunity to work with grieving families and assist them in beginning their journey of recovery and healing. Coronial proceedings, due to their nature, can be significantly re-traumatising for families and require handling in a sensitive, respectful manner. I note that in other jurisdictions, such as NSW, there are specific programs available to provide information and support to persons affected by deaths reported to the coroner. While families currently have access to social workers in the Coroners Court, the support they provide is limited, usually to providing and obtaining information, and not therapeutic. Additionally, witnesses in the Coroners Court are not victims of crime and do not have the same supports available throughout proceedings, even in instances where they are impacted by DFSV.

Regarding the cultural safety and support of Aboriginal families in the Coroners Court, it is mentioned in the Recovery and Healing section of the CAA submission that there is a Koori Engagement Unit in Victoria. I should also mention that in the last several years dedicated Aboriginal Liaison Officers have been appointed in the majority of the Coroners Courts around Australia. Until now there has been no funding available for a dedicated Aboriginal Coronial Liaison Officer and the Coroners Court social workers continue to be the only point of contact for Aboriginal families. The social workers' workload leaves them unable to provide culturally appropriate support and assist in ascertaining kinship structures.

In conclusion, the Coroners Court plays a unique role in the prevention of further DFSV-related deaths and within the recovery and healing journeys of affected families. The scope of this role cannot be further expanded without significant investment, most crucially into the expansion and upgrade of our existing facilities.

Yours sincerely



David Whittle
STATE CORONER



*CHIEF MAGISTRATE'S CHAMBERS
MAGISTRATES COURT
ADELAIDE*

5 November 2024

Natasha Stott Despoja AO
Royal Commissioner
Royal Commission into Domestic, Family and Sexual Violence

By email only: RoyalCommissionDFSV@sa.gov.au

Dear Commissioner

This letter accompanies, and should be read in conjunction with, the submission of the Courts Administration Authority (CAA) to the Royal Commission into Domestic, Family and Sexual Violence.

As recognised in the CAA's submission, in South Australia the Magistrates Court is the court that deals with the greatest proportion of litigation, both civil and criminal. It is a busy court that deals with a large volume of matters that are categorised as domestic, family and sexual violence (DFSV) and, consequently, is well placed to offer insights into how the criminal justice system deals with issues that can arise in such matters.

The Magistrates Court endorses the content of the CAA's submission and supports the four focus areas identified in the submission. The following insights are offered in relation to each of those areas.

1. Expand timely, efficient, mandated intervention programs to enforce perpetrator accountability.

The Magistrates Court runs dedicated Family Violence lists in each of its metropolitan and regional courts. These lists deal with domestic and family violence matters, police issued intervention orders, and applications for both police sponsored intervention orders and private intervention orders.

Magistrates sitting in these lists are the first line of interaction between defendants/respondents and the Courts and are therefore uniquely placed to consider referral of appropriate candidates to the Abuse Prevention Program (APP).

As noted in the CAA's submission, at present resource constraints limit such referrals to men alleged to have perpetrated violence against their current or former female partner. With further funding, there is scope to expand this narrow category to include a wider array of people. Anecdotally, the APP provides an excellent opportunity for early intervention and many participants subsequently comment positively on the program and the beneficial, behaviour changing insights it delivered to them. It is therefore of value to have as many eligible defendants/respondents as possible participating in the program.

To facilitate assessment for and participation in the APP, timelines should be kept to a minimum. As noted in the CAA's submission there is a delay in the assessment process and, where a defendant/respondent is recommended to participate in a program, an additional delay until a program place becomes available. Such delays impede early intervention along with the associated benefits.



At present the APP is not available to defendants who are remanded in custody or serving a sentence of imprisonment. It would be beneficial if each of these groups could be given the opportunity to participate in an appropriate program.

Additionally, where a defendant in a DFSV matter does not qualify for or does not wish to be assessed for participation in an APP and intends from the earliest stage to contest the charge(s), there is scope for the Magistrates Court to implement a 'fast track' approach to expedite the matter proceeding to trial. This would require the prosecution and the defence to commit to ensuring the prompt progress of the matter through the necessary pre-trial phases (e.g. disclosure and pre-trial conference), with a view to there being a trial of the matter within four to five months of the charge first coming before the Court. Victoria is an example of a jurisdiction that has adopted a 'Family Violence Fast Tracking' arrangement to promote the timely commencement, progression and resolution of criminal charges arising out of family violence incidents. Any such initiative would have to be adequately resourced to ensure that adequate facilities, magistrates and staff were available to support the 'fast track' approach.

It is recommended that additional resourcing be provided to the CAA to:

- **support earlier intervention by:**
 - o **providing additional staffing of the APP to reduce assessment timeframes, and**
 - o **expanding the capacity of current programs to reduce commencement delays;**
- **increase the availability of early intervention behaviour change programs by:**
 - o **creating additional APP capacity to expand eligibility to encompass all defendants alleged to have perpetrated domestic violence, irrespective of gender, and to incorporate defendants alleged to have perpetrated family violence against a wider array of alleged victims including children, siblings, parents or grandparents.**
- **fast track matters that are contested.**

2. Protect victims' safety, security and wellbeing through court infrastructure and design.

Where appropriate, Magistrates seek to implement the various protections for alleged victims' safety, security and wellbeing referred to in the CAA's submission. However, successful implementation is always dependent upon adequate resources and facilities being available. Where they are not, the Court endeavours to make arrangements that mitigate relevant concerns but as is noted in the CAA's submission, the Magistrates Court facilities at many locations are dated and do not have the required facilities to protect and properly accommodate alleged victims and other vulnerable witnesses.

A review of the adequacy of current facilities is currently being undertaken.

It is recommended that adequate resourcing be provided to implement Court infrastructure upgrades to protect victims' safety, security, and wellbeing.

3. Provide clear and accessible information to guide people through the DFSV court system.

The initiatives identified in the CAA's submission to make information regarding DFSV both available and accessible to participants in the DFSV court system is a recognition of, particularly in more recent times, an increase in the number of self-represented defendants/respondents appearing in Family Violence lists statewide. The Magistrates Court provides a central early point of contact for parties involved in DFSV related proceedings. As such, it offers an opportunity for access to information from or contact with agencies providing services and support to those impacted by DFSV.

The Magistrates Court endorses the CAA's submissions and recommendations on this topic.

As an extension of this area, it is also recommended that consideration be given to amending the *Criminal Law (Legal Representation) Act 2001* (the *Representation Act*) to mandate legal assistance for self-represented defendants facing the cross-examination restrictions in s13B of the *Evidence Act 1929*.

Pursuant to s13B, a self-represented defendant is not permitted to cross-examine a witness who is the alleged victim of an offence to which the section applies, including, for example, aggravated assaults on family members and breaches of intervention orders. There is an obligation in s13B(3) of the *Evidence Act* for the Court to warn the defendant of this limitation and to inform the defendant that they may be entitled to legal assistance under the *Legal Services Commission Act 1977* and of their rights under the *Representation Act*.

The *Representation Act*, among other things, mandates that the Legal Services Commission must grant legal assistance to a self-represented defendant charged with a 'serious offence' for the purpose of cross-examining a s13B witness. However, for the purposes of the *Representation Act*, the definition of 'serious offence' only extends to an indictable offence (including a summary offence tried together with an indictable offence) **tried in the Supreme Court or the District Court**. If the trial of the offence is in the Magistrates Court, the practical consequence is that the self-represented defendant is prohibited from cross-examining the alleged victim but **is not entitled** to legal assistance for that purpose.

The solution is to amend the *Representation Act* by including a reference to the Magistrates Court in the definition of 'serious offence' in s4 of the Act. This will extend the mandatory representation provision relating to s13B of the *Evidence Act* to trials of qualifying serious offences in the Magistrates Court. This means that self-represented defendants in such matters can access legal representation for the purpose of the legal representative then cross-examining the alleged victim, including qualifying DFSV offences. It would also avoid a situation arising where a self-represented defendant is not able to ask questions in cross-examination but there is no process for the Magistrates Court to ensure a fair trial by allowing appropriate questions to be asked by some other means.

It is recommended that the *Criminal Law (Legal Representation) Act 2001* is amended by including a reference to the Magistrates Court in the section 4 definition of 'serious offence'.

4. Upskill frontline staff and volunteers with DFSV specific education and training.

As noted in the CAA's submission, all Magistrates are encouraged to attend DFSV training, where available. Additionally, Magistrates are provided with the opportunity to attend regular Family Violence List Forums hosted by the Manager of the Magistrates Court Family Violence List. The Magistrates Court would welcome any further training that would assist Magistrates to improve their understanding of DFSV.

It would also be of great benefit for Magistrates Court staff, contact centre staff and volunteers, who each interact daily with complainants, protected persons, respondents, and defendants, to be able to access education and training relevant to DFSV.

It is recommended that additional resourcing be provided to enable regular court wide DFSV training to judiciary, staff, and volunteers to facilitate appropriate responses to DFSV parties and trauma-informed management of DFSV related proceedings.

Finally, should the Royal Commission make recommendations that result in legislative reform or systemic reform to address DFSV, as the CAA's submission observes, any such reforms must be supported by a 'robust justice pipeline funding model'. This is essential to ensure that the courts can meet any additional demands resulting from those reforms and thereby support successful implementation.

Accordingly, it is recommended that any legislative or systemic reform be supported by a robust justice pipeline funding model, to ensure the courts can meet additional demands and improve the prospects of successful implementation of those reforms.

In conclusion, the Magistrates Court is uniquely placed to interact at an early stage with defendants/respondents in DFSV matters. Every opportunity should be taken to ensure that such interactions are as positive and productive as possible, so that they lay the foundation for the prompt, efficient and effective resolution of DFSV allegations. The CAA's submission identifies four areas that will assist in achieving such outcomes. These are endorsed and supported by the Magistrates Court.

It must be recognised that the four areas identified extend also to ensuring that complainants and others interacting with the criminal justice system in relation to DFSV matters have as positive an experience as possible. Complainants will benefit from being able to access wrap around support from the earliest stages of allegations of DFSV arising and every effort should be made to ensure that adequate counselling, emotional support, advice, and advocacy are made available. In this regard, with adequate support, resourcing and training, the Magistrates Court can act as a gateway for people's early interaction with the criminal justice system.

I want to acknowledge and thank the considerable work of [REDACTED]

Yours sincerely

[REDACTED]

JUDGE MARY-LOUISE HRIBAL
CHIEF MAGISTRATE