

Commissioner Natasha Stott Despoja AO
Royal Commission into Domestic, Family and Sexual Violence
GPO Box 464
Adelaide SA 5001

Via electronic submission

14 August 2024

Dear Commissioner

DOMESTIC, FAMILY AND SEXUAL VIOLENCE: ISSUES PAPER

Thank you for the opportunity to contribute to this timely inquiry. I am an Associate Professor in Law at the University of South Australia, the volunteer Director of the Rights Resource Network South Australia. I am actively researching and engaging with practitioners and community organisations on many aspects of the Commission's Terms of Reference, and have led one of the few independent, local studies on the effectiveness of legal responses to domestic and family violence in South Australia.¹ In May 2022 I completed the *Powerful Interventions* Project which sought to identify ways to improve the use and enforcement of Intervention Orders² as a tool to address family and domestic violence in South Australia.³ The *Powerful Interventions* Project was funded by the Law Foundation of South Australia as part of the Brian Withers Grant with significant in-kind support also provided by the University of South Australia and Uniting Communities. The *Powerful Interventions* Project was undertaken in partnership with Uniting Communities SA and in close consultation with an Advisory Group of Experts.⁴ The Advisory Group was also supported by input from officers from the Courts Administration Authority and the Department for Correctional Services. The *Powerful Interventions* Project also heard directly from those with lived experience interacting with the Intervention Orders regime in South Australia. This included 63 anonymous survey responses, 48 from service providers and 15 from people with lived experience. Twenty individual interviews were conducted (ten with persons with lived experience and ten with service providers) along with four focus groups.

I have summarised some of the key findings from the *Powerful Interventions* Project as they relate to the Issues Paper and intend to provide a more detailed submission in response to the Royal Commission's Terms of Reference by the September deadline. I have also included as an Appendix an Overview of the Legal Framework relating to Intervention Orders in South Australia in case it assists the Commission with its work.

¹ Moulds, S., & Yohanesh, S. R. (2022). *Powerful Interventions: Improving the use and enforcement of Intervention Orders as a tool to address family and domestic violence in South Australia: Final Report*, Adelaide SA, University of South Australia available at < <https://doi.org/10.25954/cmdw-v174>>; Moulds, Sarah, 'Cautious Interventions: The Need for Evidence-Based Reform for Intervention Orders in South Australia' (2022) 35(2) *Australian Journal of Family Law* 159.

² 'Intervention Orders' refers to the orders made under the *Intervention Orders (Prevention of Abuse) Act 2009* (SA)

³ Moulds, S 2022, *Connected parliaments: reimagining youth engagement with parliaments in Australia*, Winston Churchill Trust Australia, Australia.

⁴ Advisory Group Members were Adrian Nippres, Family and Domestic Violence Advocacy Practitioner; Andy Wong, Family Dispute Resolution Manager, Centacare Catholic Family Services; Anna Kemp, Community Corrections Officer/Social Worker, Department for Correctional Services; Ceri Bruce, Senior Family Dispute Resolution Practitioner Centacare Catholic Family Services; Chloe Goldsworthy, Solicitor, Women's Legal Service (SA); Dimitra Droulias, Civil Practice Director, Aboriginal Legal Rights Movement; Jennifer Kingwell, Policy & Communications Manager, Embolden SA; Julie Redman, Family Law Specialist, Adelta Legal; Louise Kelly, Deputy CEO, OARS Community Transitions; Dr Michele Jarldorn, Lecturer in Social Work, University of South Australia; Dr Nada Ibrahim, Course Coordinator/Tutor, University of South Australia; Rev Peter McDonald, Executive and UCA Minister, Uniting Communities; Phil Martin, Counsellor, Uniting Communities; Professor Sally Robinson, Professor of Disability and Community Inclusion, Flinders University; Professor Sarah Wendt, Matthew Flinders Fellow and Professor in Social Work, Flinders University.

I commend the Commission for providing the South Australian community with the opportunity to comment on the Issues Paper and look forward to assisting the Commission with further information as appropriate.

Yours sincerely



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Preliminary Observations: Identifying an appropriate conceptual framework

In my view, the key questions set out in the Issues Paper are appropriate, relevant and well targeted in response to the Commission's Terms of Reference. The Commission's clear commitment to ensure it prioritises the voices of those with lived experience of domestic, family and sexual violence, as well as those with front line service provision experience, is welcome and fundamental to the Commission's ability to develop practical, sustainable recommendations.

Engaging with individuals and communities who experience intersectional disadvantage – such as women with experience in the criminal justice system, or families experiencing poverty or insecure housing – is also fundamental. For too long, those at greatest risk of harm from domestic, family and sexual violence have been missing from the policy debate.

It is also pleasing to see a multi-disciplinary, multi-agency approach to identifying the relevant issues adopted in the Issues Paper that recognises the intersection of systems and strategies designed to respond to domestic, family and sexual violence (including justice system responses, health system responses and social services responses). This will hopefully elicit insights into how to develop holistic, longer-term solutions and responses, rejecting a 'siloed' approach to dealing with the complex causes of these forms of violence.

Despite these positive features, the challenge of whether (or how) to 'centre' certain approaches to conceptualising and responding to domestic, family and sexual violence is ever-present. Should a feminist approach be adopted, for example, that underscores the gendered nature of family, domestic and sexual violence and interrogates the problem and evaluates solutions using a feminist lens? Or should a trauma framework be used to assess the needs and rights of each of the key actors impacted by, experiencing or engaging in violence, and to identify appropriate investments or interventions needed to respond to various manifestations of trauma? Many would advocate for the adoption of a combination of these and other approaches, with a view to being as inclusive and practical as possible. However, this in itself presents challenges: how can we develop a shared 'picture' of who is suffering or at risk of harm, and who is responsible for making changes to prevent or respond to harm?

It is not yet clear how the Commission will seek to approach the development of evaluation criteria for best practice, for example, or whether it intends to transparently articulate its theoretical assumptions about either the drivers of violence, or the needs, rights and characteristics of the key parties involved. Perhaps this will be resolved following the receipt of feedback in response to the Issues Paper or developed further from the existing section on 'language used in this paper'. I look forward to learning more about how the Commission intends to address these issues.

Benefits of adopting a human rights approach

My own preferred approach is to lean on human rights principles that centre dignity, freedom and equality⁵ and embrace systematic approaches to proportionality and limitations of rights, recognising the 'balancing' that must occur when grappling with how to protect and promote intersecting rights and freedoms in our community.

It is for this reason that I am working a coalition of organisations (including the Law Society of South Australia, the South Australian Council of Social Services, Australian Lawyers for Human Rights and the Rights Resource Network SA) to advocate for a Human Rights Act or Human Rights Charter for South Australia, so that legislators, governments and community organisations have the tools we need to articulate and protect in law human rights and freedoms that Australia has agreed to uphold under core United Nations international human rights instruments. This would include civil and political rights, including the right to equality, right to liberty and security of person, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the right to a fair trial. It would also include economic, social and cultural rights such as the right to housing, right to equal access to health care and the right to social security. These and other internationally recognised rights have been carefully examined by international human rights bodies including the UN Special Rapporteur on

⁵ See e.g Ramona Vijayarasa, 'CEDAW's General Recommendation No. 35: A Quarter of a Century of Evolutionary Approaches to Violence against Women' (2020) 19(2) *Journal of human rights* 153

torture and other cruel, inhuman or degrading treatment or punishment, who made the following statements to the General Assembly about the positive and negative duties of states with respect to domestic violence and the right not to be subjected to cruel, inhuman, or degrading punishment under international human rights law:

Domestic violence always amounts to cruel, inhuman or degrading punishment and very often to physical or psychological torture under universally applicable human rights law. Domestic violence gives rise to a wide range of human rights obligations, one of which is the obligation of states to prevent acts of torture and ill-treatment, including at the hands of private actors. States not only have a negative obligation to refrain from engaging in, instigating or otherwise encouraging domestic violence. They also have the positive obligation to effectively prevent, protect against, respond to, investigate, prosecute and provide redress for such abuse at the hands of private actors.⁶

The Rapporteur went on to explain that failure to exercise due diligence to prevent, investigate, prosecute and redress torture and ill-treatment by private perpetrators, including in the context of domestic violence, amounts to consent or acquiescence in torture or ill-treatment. States incur international legal responsibility when they fail to take measures of prevention, protection and redress that are reasonably available to them and likely to have the desired effect. To comply with their obligations under this right, states must establish legal provisions, mechanisms and processes that protect people from torture and ill-treatment and that includes in a domestic violence context.

In 2017 the UN Committee on the Elimination of Discrimination against Women explained that ‘gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated’.⁷ The CEDAW Committee also explained that:

Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.⁸

The CEDAW Committee described gender-based violence against women:

as being rooted in gender-related factors, such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.⁹

The Committee explained that under the CEDAW and general international law ‘a State party is responsible for acts or omissions of its organs and agents that constitute gender based violence against women, which include the acts or omissions of officials in its executive, legislative and judicial branches’.¹⁰ It was further observed that States parties must have an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women, and this much engage all areas of State action, including in the legislative, executive and judicial branches

⁶ Ibid.

⁷ CEDAW COMMITTEE. (2017) General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 at [10].

⁸ CEDAW COMMITTEE. (2017) General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 at [15].

⁹ CEDAW COMMITTEE. (2017) General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 at [16].

¹⁰ CEDAW COMMITTEE. (2017) General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 at [26].

and at the federal, national, subnational, local and decentralized levels, as well as action under governmental authority by privatised governmental services. .¹¹ At a practical level, this requires ‘the formulation of legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against women, whether perpetrated by State or non-State actors’.¹² It also requires the ‘adoption and implementation of measures to eradicate prejudices, stereotypes and practices that are the root causes of gender-based violence against women’.¹³

A human rights approach also recognises that every human impacted by, experiencing or engaging in domestic, family and sexual violence has dignity and rights that deserve protection. This includes perpetrators, and those who may have been misidentified as perpetrators, as well as those subject to justice systems designed to prevent, deter and punish violent behaviour. A human rights approach also provides a framework for acknowledging the specific rights of children, persons with disabilities, and First Nations peoples when conceptualising of, and responding to, domestic, family and sexual violence.

To me, a human rights lens could offer a clear conceptual framework for exploring the questions set out in the Issues Paper that also recognises the central responsibility of the State to prevent harm and protect and promote human rights of everyone impacted by domestic, family and sexual violence. My research into the use of Interventions Orders as a tool to respond to and prevent domestic, family and sexual violence in South Australia strongly suggests that *state responses to violence* – primarily through policing and court processes – are currently failing to protect and promote human rights. Indeed, my research suggests that poor quality State responses to violence are in many cases *contributing* to human rights breaches experienced by individuals and communities impacted by domestic, family and sexual violence.

For this reason, I encourage the Royal Commission to ensure its ongoing work explicitly identifies the positive obligation on the government of South Australia to take effective legislative administrative, judicial and other measures to prevent acts of domestic violence and ensure due diligence in the investigation and prosecution of such violence. Assessing state performance against this obligation, including by the South Australian Police and the South Australian Courts, is vital to addressing the harm caused by domestic, family and sexual violence in South Australia. Under this approach, the onus is squarely placed on the *state* (rather than the community sector or individuals) to elicit relevant information and justify any departure from these internationally recognised human rights standards and obligations.

I also urge the Royal Commission to consider recommending that South Australia enact a Human Rights Act or Charter of Rights to require Parliament to consider our human rights when passing and amending legislation and require public entities, including police and courts, to act compatibly with human rights. A Human Rights Act would also enable South Australian courts and tribunals to interpret legislation consistently with human rights and empower them to issue a declaration for Parliament to consider if they find that a law breaches human rights or require the Attorney-General to inquire into the law, and provide accessible, simple, low cost pathways that people can use to make a complaint and seek a solution if their human rights are breached.

Just like the existing human rights legislation in other jurisdictions, a South Australian Human Rights Act would retain respect for the sovereignty of Parliament and recognise that almost all human rights can and should be subject to limitations when necessary and justifiable to protect other rights or public interests. For example, section 13 of the *Human Rights Act 2019* (Qld) provides that:

¹¹ CEDAW COMMITTEE. (2017) General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 at [26]

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- (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—
 - (a) the nature of the human right;
 - (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
 - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
 - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
 - (e) the importance of the purpose of the limitation;
 - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
 - (g) the balance between the matters mentioned in paragraphs (e) and (f).

In my view, such a law will ensure that legislators, government agencies and community members have a common language, and a new set of tools, from which to navigate competing claims of rights in a consistent, systematic, transparent way. Moreover, a South Australian Human Rights Act could create a culture of human rights awareness within and between the three arms of government in South Australia, and help us to rebuild trust in the democratic institutions we rely upon to protect our freedoms, and express our different views in peaceful, productive ways. In my view, a South Australian Human Rights Act would also directly assist in the design, implementation and review of legal and policy responses to domestic and family violence in South Australia, and help ensure dignity, equality and fairness are placed at the heart of all government decision making in this area. I am very much encouraged by the extensive expertise Commissioner Stott Despoja has in this area, including her current position a member of the United Nations Committee on the Elimination of Discrimination Against Women. I look forward to observing how the Royal Commission employs a human rights approach to its work in this important area.

Language used in the Issues Paper

The Issues Paper employs similar terminology as that adopted in the *Powerful Interventions* Project wherein the term ‘family and domestic violence’ is used to refer to the physical and non-physical harm, abuse and trauma that can give rise to an application for or consideration of an Intervention Order being made under the *Intervention Orders (Preventing Domestic Abuse) Act (SA)*.

Although this term has generally been accepted in the relevant literature and in the legal frameworks governing Intervention Orders in South Australia, not all research participants support the use of this term. One Lived Experience participant argued that the choice of language was pivotal.¹⁴ She explained that the term ‘domestic abuse’ is considered more appropriate than ‘family and domestic violence’ as ‘family violence’ can indicate something less than serious, such as children fighting, whereas the term ‘violence’ or ‘coercive control’ are stronger than the terms that include ‘domestic’ or ‘family’.¹⁵ ‘Family violence’ can also be offensive because it eliminates the seriousness of the lived experience. According to this research participant, this term lacks empathy by people who do not have lived experience, but pretend that they do, and can be patronising and disrespectful.¹⁶

In the context of the *Powerful Interventions* project, the researchers and the Advisory Group recognised that language plays an important role in recognising and acknowledging the seriousness and long term debilitating impacts of the myriad of forms of violence perpetrated by one person against another, in

¹⁴ Lived Experience interviewee LE9.

¹⁵ Lived Experience interviewee LE9.

¹⁶ Lived Experience interviewee LE9.

the context of a domestic or family relationship. For this reason, although the term ‘family and domestic violence’ is used throughout the *Powerful Interventions* Report, wherever possible the precise nature of the violence perpetrated is described in full. I encourage the Royal Commission to adopt the same approach.

In addition, the theoretical frameworks that inform the Key Findings and Recommendations in the *Powerful Interventions* Report recognise that:

The conceptual issues pertaining to gender also clearly link to the varied definitions of [domestic violence and abuse] and the diverse use of terminology across disciplines. In particular, there are a range of views on the breadth or limitations of the term ‘violence.’ Legal perspectives tend to be more familiar with the term ‘domestic violence,’ which is used to encompass a range of physical and sexual acts of harm, but now also includes behaviours of harassment, sustained non-physical intimidation psychological and emotional abuse. However, for others it implies a reliance on the more tangible evidence of physical or sexual assault, and terms such as domestic, violence and abuse and intimate partner violence and abuse are used elsewhere to represent a more nuanced understanding of a broader range of victim/survivor experiences. The usefulness of the term ‘victim’ is also contested, with preferences by some for the term ‘survivor,’ while others find this equally problematic in terms of imposing a status, which implies a level of ongoing vulnerability or recovery. ... Arguments may also be made for a greater opportunity for self-determination and definition by those experiencing [domestic violence and abuse], although this approach assumes that victims/survivors are a homogenous group who will reach a consensus.¹⁷

I encourage the Royal Commission to continue to embrace an approach to terminology that enables submission makers to with lived experience to exercise control over how they are described or referred to in the Commission’s Report. This speaks to the conceptual challenges noted above, and the risks associated with either prescribing specific roles (such as ‘victim’ and perpetrator’) to key actors, as well as the risk associated with failing to offer shared picture of the range of different individuals and communities that are impacted by, experience or engage in domestic, family and sexual violence.

Responses to Specific Questions Raised in the Issues Paper

In this section I provide some preliminary thoughts in response to Issues Paper Questions 1, 2, 4, 6, 7, 10, 11 and 13. I look forward to providing a further response to the Royal Commission’s Terms of Reference in a subsequent submission.

1. *What causes domestic, family and sexual violence?*

I welcome the inclusion of this question in the Issues Paper, noting that it also highlights the challenges associated with developing a shared conceptualisation of domestic, family and sexual violence and/or the challenges associated with articulating or failing to articulate a particular theoretical or conceptual approach.

My own research does not seek to provide a comprehensive answer to ‘what causes domestic, family and sexual violence’, and I refer the Royal Commission to the excellent resources compiled by Australia’s National Research Organisation for Women’s Safety Limited (ANROWS) that provide an insight into the diverse and complex causal factors and socio-economic risk factors associated with domestic, family and sexual violence.

This includes compelling evidence that attests to the strong relationship between economic insecurity and interpersonal partner violence, and findings that suggest that women with higher levels of financial stress, or in relationships with high levels of income disparity, were much more likely to have experienced physical and sexual violence or emotionally abusive, harassing and controlling behaviours

¹⁷ S Hilder, and V Bettinson, ‘Introduction’ in S Hilder and V Bettinson, (eds) *Domestic Violence*, (2016) Palgrave Macmillan UK, London.

relative to women who reported low levels of financial stress or lower levels of income disparity.¹⁸ Studies have also demonstrated compelling links between high levels of housing stress and housing insecurity and increases in experiences of domestic, family and sexual violence.¹⁹

When undertaking research in the effectiveness of Intervention Orders as a tool for responding to domestic and family violence in South Australia, it was considered critical to acknowledge the impact of colonial violence on First Nations peoples in Australia when seeking to understand the prevalence and pre-conditions giving rise to domestic and family violence in South Australia.

Many studies confirm that Aboriginal and Torres Strait Islander women experience particularly severe and pervasive forms of discrimination whilst at the same time experiencing disproportionately high rates of family and domestic violence.²⁰ A 2018 report by the Australian Institute of Health and Welfare, found that family violence occurs at higher rates among Aboriginal and Torres Strait Islander women and children with women over 15 being 34 times more likely to be hospitalised for family violence than non-Indigenous women.²¹ As McGlade, and Aboriginal scholar, explains:

sexual violence in Australia is deeply grounded in our colonial history which condoned systemic rape and sexual abuse of Indigenous women. Many policy responses to family and domestic violence employed since colonisation have focused exclusively on the experiences of white women, and many have continued to ascribe to the racist colonial narrative that denigrated Indigenous women as less than human.²²

Racist attitudes towards Aboriginal and Torres Strait Islander people continue within Australian police forces and other government agencies involved in responding to family and domestic violence, further undermining the effectiveness of legal tools such as Intervention Orders within these communities.²³

Even in recent public debates about sexual harassment and gender discrimination in Australia, Aboriginal and Torres Strait Islander perspectives and stories are ignored or sidelined in favour of a narrative centred around white, middle class women.²⁴ These narratives have the potential to distract attention from the urgent need to protect and promote the rights of Aboriginal and Torres Strait Islander women and centre policy response to family and domestic violence around their needs.²⁵ The compounding impact of these experiences of intersecting discrimination mean that legal tools such as Intervention Orders remain largely out of reach and ineffective to protect Aboriginal women from violence in South Australia.

¹⁸ Morgan, A., & Boxall, H. (2022). Economic insecurity and intimate partner violence in Australia during the COVID-19 pandemic (Research report, 02/2022). ANROWS.

¹⁹ Australia's National Research Organisation for Women's Safety. (2019). Domestic and family violence, housing insecurity and homelessness: Research synthesis (2nd Ed.; ANROWS Insights, 07/2019). Sydney, NSW: ANROWS.

²⁰ See e.g. Heather Douglas and Robin Fitzgerald, 'The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander People', (2018) 7(3) *International Journal for Crime, Justice and Social Democracy*, 41–57; Heather Douglas, Robin Fitzgerald and Lachlan Heybroek, 'Sentencing, Domestic Violence, and the Overrepresentation of Indigenous Australians: Does Court Location Matter?', (2019) *Journal of Interpersonal Violence*, 88626051988591–886260519885916.

²¹ Meagan Cahill, Ryan Andrew Brown, Garrett Baker, Dionne Barnes-Proby, and Hannah Sandrini, *Australia's Third Action Plan of the National Plan to Reduce Violence Against Women and Their Children, Priority Area 2: Aboriginal and Torres Strait Islander Women and Their Children — Final Report* (2021).

²² Hannah McGlade, 'We have to bear witness': Dr Hannah McGlade on the fight for First Nations justice' *NITV* (SBS, 20 March 2021).

²³ Cahill, Brown, Baker, Barnes-Proby, and Sandrini, above.

²⁴ McGlade, above.

²⁵ See e.g. B Carlson, M Day, and T Farrelly, 'What works? Exploring the literature on Aboriginal and Torres Strait Islander healing programs that respond to family violence (ANROWS Research report, 01/2021); Cahill, Brown, Baker, Barnes-Proby, and Sandrini, above.

As the Health Foundation has explained,²⁶ there are a range of key factors that must be kept in mind when considering Aboriginal experiences of family and domestic violence, and when evaluating the suitability of legal responses to these experiences. These factors include:

- the cycle of dysfunction and erosion of community harmony that is the “direct result of the violent dispossession of land and the settler policies of extermination, segregation and assimilation intended to eliminate Indigenous people”;
- structural violence and cultural breakdown as a result of government strategies aimed at “eradicating Indigenous law and culture have resulted in a breakdown of the traditional systems and practices that would guide everyday life and expected behaviour”;
- intergenerational trauma caused by “the cumulative impact of dispossession, child removal, cultural breakdown, family breakdown, structural violence, substance misuse and exposure to violence”;
- the breakdown of Aboriginal and Torres Strait Islander men’s cultural status is associated with higher levels of violence.²⁷

These factors are evident in the responses received from Aboriginal participants in the *Powerful Interventions* Project, some of whom explain that when considering the experiences of Aboriginal people interacting with the Intervention Orders system, consideration must be given to the ongoing trauma caused by colonisation and the historical injustices and neglect perpetrated by State authorities against Aboriginal people.²⁸ In line with this reflection, some Aboriginal participants called for:

- a 24 hour a day ‘call out’ option for Aboriginal women to access anytime they are interviewed by police in the context of a domestic or family violence offence, that would ensure Aboriginal women have access to culturally appropriate support; and
- the provision of funding to empower and support Aboriginal communities in regional and remote areas to design community based responses to family and domestic violence issues, in line with the key principles and objectives set out in the *Intervention Orders (Prevention of Abuse) Act 2009* (SA).²⁹

A number of participants also wanted governments to empower and support Aboriginal and CALD communities in regional and remote areas to co-design community-based responses to family and domestic violence issues, in line with the key principles and objectives set out in the Intervention Orders Act.³⁰ An example of this model is the Nargneit Birrang Framework: Aboriginal Holistic Healing Framework for Family Violence, which aims to guide the flexible design, funding, implementation and evaluation of Aboriginal-led holistic healing programs for family violence in Victoria.³¹ This model constitutes a re-conceptualisation of the provision of family violence funded services and require government to incorporate into core funding flexibility in service design, and funding to enable the Aboriginal evidence knowledge to grow in line with self-determination. It requires Aboriginal organisations to articulate their practice approach, and to show linkages between activities and expected outcomes.³² Unlike a domestic violence framework that typically offers pathways to criminal justice, an Aboriginal and Torres Strait Islander family violence framework prefers to avoid such a route,

²⁶ The Healing Foundation, above, 6–14. See also A Flynn, A Powell, and S Hindes, *Technology-facilitated abuse: A survey of support services stakeholders* (ANROWS Research report, 02/2021).

²⁷ Ibid.

²⁸ See eg Service Provider interviewee A13.

²⁹ Service Provider interviewee A13.

³⁰ Service Provider interviewee A13.

³¹ See Victorian Aboriginal Child Care Agency, *ThinkPlace*, & *Family Safety Victoria*, (2019) Victorian Government, 29.

³² Ibid, 17.

favouring instead pathways to collective and family healing.³³ I encourage the Royal Commission to continue to prioritise the perspectives, experiences and recommendations identified by Aboriginal people and Aboriginal communities in South Australia when undertaking this important work.

The *Powerful Interventions* Project also acknowledged that one of the most significant barriers to the effectiveness and enforcement of Intervention Orders derived not from the law per se, but instead from gender-based discrimination exercised by those responsible for addressing or responding to family and domestic violence.³⁴ These gendered attitudes and assumptions have the potential to infect all aspects of the domestic violence system, including family and friends, Magistrates, police and health care providers. When applied to a victim or survivor of domestic or family violence, they can shape that person's future interaction with the legal system and other public institutions and have a pervasive, negative impact on their recovery, safety and wellbeing.³⁵

The predominant characteristic of these attitudinal barriers is a gender bias against women. This can take many forms including a propensity to 'disbelieve' a women who reports family and domestic violence, or an assumption that a victim of family and domestic violence did something to 'deserve' or 'provoke' that treatment or that women 'should' conform to a certain societal expectation of a 'good woman'.³⁶

When gender-based discrimination or gender biases are exercised by police or the courts, the impact on the legal frameworks designed to respond to family and domestic violence can be particularly profound.³⁷ Past research has documented the immense difficulties a victim of family and domestic violence may have to overcome before reporting a matter to police, including risking her own safety and privacy and that of her children.³⁸ If the police response is inadequate or discriminatory, it can lead to re-traumatisation, disengagement with support services and sometimes to negative physical or mental health outcomes and continued or new forms of violence.³⁹ This makes police responses to reports of family and domestic violence a particularly critical component of any Intervention Orders regime.

Past research has documented the inadequate way family and domestic violence victims have been treated by some government officials⁴⁰, including some magistrates who do not perceive breaches of domestic violence orders as serious matters⁴¹ and some police officers who apply inconsistent responses

³³ H Blagg, T Tulich, V Hovane, D Raye, T Worrigal, and S May *Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence* (ANROWS Research report, 19/2020).

³⁴ See e.g. Enrique Gracia, Manuel Martín-Fernández, Miriam Marco, Faraj Santirso, Viviana Vargas, and Marisol Lila, 'The Willingness to Intervene in Cases of Intimate Partner Violence Against Women (WI-IPVAW) Scale: Development and Validation of the Long and Short Versions', (2018) 9 *Frontiers in Psychology*, 1146.

³⁵ H Nancarrow, K Thomas, V Ringland and T Modini, *Accurately identifying the "person most in need of protection" in family and domestic violence law* (Research report, 23/2020). Sydney: ANROWS.

³⁶ See e.g. Tanya Mitchell, 'A dilemma at the heart of the criminal law: The summary jurisdiction, family violence, and the over-incarceration of Aboriginal and Torres Strait Islander peoples', (2019) 45(2) *University of Western Australia Law Review*, 136–165.

³⁷ Neely Mahapatra and Abha Rai 'Every cloud has a silver lining but... "pathways to seeking formal-help and South-Asian immigrant women survivors of intimate partner violence"', (2019) 40(11) *Health Care for Women International*, 1170-1196, DOI: 10.1080/07399332.2019.1641502.

³⁸ Nancarrow, Ringland, and Modini, above n 35.

³⁹ Sarah Wendt, Donna Chung, Alison Elder, Antonia Hendrick, and Angela Hartwi, *Seeking help for family and domestic violence: Exploring regional, rural, and remote women's coping experiences: Key findings and future directions* (ANROWS Compass, 06/2017).

⁴⁰ Victims of Crime South Australia, *Annual Report 2019-2020*, (2021) South Australian Government <<https://www.voc.sa.gov.au/about-us/annual-reports/2019-2020-annual-report>> (accessed 22 April 2022).

⁴¹ COAG Advisory Panel on Reducing Violence against Women and their Children, *Final Report*, (2016) Australian Government.

to domestic violence orders application and contravention⁴² depending on the personal characteristics of the perpetrators or victims.⁴³ Some research suggests that victims are sometimes seen as partly or wholly responsible for the violence that has been perpetrated against them and/or their families.⁴⁴ These inconsistent and sometimes discriminatory responses by police and court officials have been cited as particularly significant obstacles for those seeking legal interventions to protect them against violence and abuse.⁴⁵

These concerns have given rise to sustained efforts to improve policing practice and responses to family and domestic violence, including in South Australia.⁴⁶ However, past studies reveal that unless these programs and policies are sufficiently entrenched and enforced, discriminatory attitudes towards victims can continue to contribute to inadequate responses in handling family and domestic violence incidents and breaches of domestic violence orders.⁴⁷ As Segrave, Wilson and Fitzgibbon have observed, despite innovations in policy and training, many police officers keep viewing family and domestic violence as a crime that significantly consumes their time and resources in policing, and are becoming frustrated and unsympathetic in providing assistance to the victims.⁴⁸

Gender-based discrimination can also have an impact on the way victims and survivors of domestic violence view their legitimate role within legal systems designed to respond to this complex social issue. This can lead women who are protected persons under an Intervention Order to decline to report breaches of the order, withdraw the order or even do something that causes the perpetrator to breach the Intervention Order, such as visiting or contacting the perpetrator.⁴⁹

Gender-based discrimination can have particularly acute impacts on women who also experience other forms of discrimination, exclusion or social pressures due to their race, ethnicity or cultural or social background.⁵⁰ These intersecting forms of discrimination can give rise to a range of barriers when it comes to accessing legal frameworks designed to respond to family and domestic violence including Intervention Orders.⁵¹ In 2010 the Australian Law Reform Commission and New South Wales Law Reform Commission identified these barriers as including:

- feelings of shame of being a victim of family and domestic violence victims,
- an expectation that the victim (rather than the perpetrator) will be seen as the responsible person
- fear of not being believed; and

⁴² N Vallins, 'Police responses to family violence: Recasting a duty of care' (2017) 42(1) *Alternative Law Journal*, 29–34. <https://doi.org/10.1177/1037969X17694781>.

⁴³ C Dowling, A Morgan, S Hulme, M Manning, and G Wong, 'Protection orders for domestic violence: A systematic review' (2018) *Trends & Issues in Crime and Criminal Justice*, 551.

⁴⁴ S Heward-Belle, C Humphreys, L Healey, C Toivonen, and M Tsantefski, 'Invisible Practices: Interventions With Men Who Use Violence and Control' (2019) 34(3) *Affilia*, 369–382.

⁴⁵ Neely Mahapatra and Abha Rai 'Every cloud has a silver lining but... "pathways to seeking formal-help and South-Asian immigrant women survivors of intimate partner violence"', (2019) 40(11) *Health Care for Women International*, 1170–1196, DOI: 10.1080/07399332.2019.1641502.

⁴⁶ See e.g. South Australian Police, *Annual Report 2015-2016* (2017) South Australian Government, available at <https://www.police.sa.gov.au/__data/assets/pdf_file/0020/363215/Annual-report-2015-2016.pdf> (accessed 22 April 2022).

⁴⁷ J Goodman-Delahunty, and AC Crehan, 'Enhancing Police Responses to Domestic Violence Incidents: Reports From Client Advocates in New South Wales' (2016) 22(8) *Violence Against Women*, 1007–1026.

⁴⁸ M Segrave, D Wilson, and K Fitz-Gibbon, 'Policing intimate partner violence in Victoria (Australia): Examining police attitudes and the potential of specialisation' (2018) 51(1) *Australian & New Zealand Journal of Criminology*, 99–116.

⁴⁹ South Australian Police Website, 'Information about Intervention Orders' (2021) South Australian Government, available at <https://www.police.sa.gov.au/__data/assets/pdf_file/0015/2616/Restraining-orders-in-English.pdf> (accessed 22 April 2022).

⁵⁰ A Blatchford, and J Morgan, 'Making Violence Against Women (In)Visible? Restrictions On Media Reporting of Intervention Orders' (2020) 46(1) *Monash University Law Review*, 228.

⁵¹ Lyn Francis, Deborah Loxton and Colin James 'The culture of pretence: a hidden barrier to recognising, disclosing and ending domestic violence' (2017) 26 *Journal of Clinical Nursing*, 2202–2214.

- believing that violence is normal or that family and domestic violence is a private matter.⁵²

Other studies have found that women from culturally and linguistically diverse (CALD) backgrounds are less likely to report family and domestic violence as they may face considerable practical barriers relating to escaping violence and accessing help and understanding Australia's systems, and are at risk of exclusion from important community events, the practice of cultural norms or exercise of religious beliefs.⁵³ Other studies have documented the complex range of barriers impacting migrant women's decision to engage with legal processes to protect against family and domestic violence, including cultural understandings of intimate domestic relationships and conflict resolution.⁵⁴ This was also reflected in this research, where one participant with lived experience, referred to as ML, explained that the way power and influence is exercised in her particular migrant community is a significant factor impacting the effectiveness of the Intervention Orders regime.⁵⁵ In ML's experience, the unequal gender roles within her community added to her experiences of isolation and impeded her ability to seek protection against abuse and violence.

You have to have a man to be there for you. And if you don't have a male figure in everything that you do, you are not respected and you have no status in the community. And if you attempt to leave your husband you are ridiculed and humiliated and considered available for sexual intercourse or other sexual activities by other men.⁵⁶

Geographical location can also impact a woman's access to domestic violence services and legal tools including Intervention Orders. Campo and Tayton reported in 2015 that women residing in regional, rural and remote areas may face specific social structures where family and domestic violence is minimised or not to disclose to avoid stigma, shame, and community gossip.⁵⁷ Some women in regional and remote communities may also experience a lack of privacy, particularly if law enforcement officers, health professionals and family and domestic violence workers are well known to victims or perpetrators, or vice versa.⁵⁸ There is also evidence to suggest that in more socio-economically disadvantaged areas, family and domestic violence reoffending appears to be higher.⁵⁹

Other categories of women also face attitudinal barriers when seeking to access domestic violence laws and programs. For example, for criminalised women, there is often the perception (in society broadly, but also in service provision, social support and interventions) that they somehow are responsible for the violence perpetrated against them, often with the adage used that 'if you sleep with dogs, you should expect to get fleas'.⁶⁰ Those working closely alongside criminalised women suggest that the official statistics of experiences of interpersonal violence are much lower than the lived experience.

⁵² Blatchford and Morgan, above.

⁵³ Women's Safety Service South Australia, Website, *Information For Workers*, 'Culturally Linguistically Diverse Clients, (2021) <<https://womenssafetyservices.com.au/index.php/information-for-workers/culturally-linguistically-diverse-clients>>.

⁵⁴ L Satyen, S Piedra, A Ranganathan, and N Golluccio, (2018) 'Intimate Partner Violence and Help-Seeking Behavior among Migrant Women in Australia' (2018) 33(7) *Journal of Family Violence*, 447.

⁵⁵ Lived Experience interviewee LE5.

⁵⁶ Ibid.

⁵⁷ M Campo, and S Tayton, 'Family and domestic violence in regional, rural and remote communities: An overview of key issues' (2015) *CFCA Practitioner Resource* (online) available at <<https://aifs.gov.au/cfca/publications/domestic-and-family-violence-regional-rural-and-remote-communities>> (accessed 5 May 2022).

⁵⁸ Ibid.

⁵⁹ S Hulme, A Morgan, and H Boxall, 'Domestic violence offenders, prior offending and reoffending in Australia' (2019) 580 *Trends & Issues in Crime and Criminal Justice*, 1.

⁶⁰ See e.g. Heather Douglas, and Robin Fitzgerald 'Legal processes and gendered violence : cross-applications for domestic violence protection orders', (2013) 36(1) *University of New South Wales Law Journal* 56–87.

Organisations such as Seeds of Affinity in SA, Sisters Inside in Qld and Flat Out in Vic estimate that the prevalence of violence against these women is more likely to be in excess of 90%.⁶¹

Women with disabilities also face intersecting forms of discrimination that can be ignored or underestimated when developing effective policy and legislative responses to family and domestic violence.⁶² The actual rate of incidents of violence against women with disabilities is believed to be higher than the data demonstrates due to under-reporting and inadequate data collection processes.⁶³ As Dyson, Frawley, and Robinson have reported, women with disabilities who have experienced family and domestic violence may have also experienced abuse related to their disability, including institutional violence and denial of provision of essential care.⁶⁴ This can lead to a lack of appropriately targeted support domestic violence services and responses for women with disabilities.⁶⁵

When viewed together, there is a considerable body of scholarship to confirm that gender-based discrimination is a leading (if not most significant) cause of family and domestic violence.⁶⁶ This is mirrored in the statistics cited in the introduction to this Report documenting that the overwhelming majority of family and domestic violence incidents are perpetrated by men against women.⁶⁷ It is also reflected in the qualitative findings discussed below.

The *Powerful Interventions* Project also revealed that a common assumption that has the potential to seriously undermine the effectiveness of current response to domestic and family violence in South Australia is that all complainants are *female victims* and all defendants are *male perpetrators*. The experience of women victims of violence defending domestic violence orders has been subject to investigation by Jillard and Mansour in a study conducted in 2014 in NSW that considered the experiences of over 100 women defendant clients of a Women's Legal Service during 2010.⁶⁸ The study arose out of concern 'at the number of our clients identifying as victims of domestic violence but presenting as defendants to [apprehended violence orders] and criminal charges' and the 'drastic jump' in the percentage of women 'Persons Of Interest' being proceeded against by police for domestic assault.⁶⁹

The authors 'acknowledge that women can engage in violent and abusive conduct sufficient to warrant the making of [a domestic violence order], and that men can be victims of domestic violence' but found that, on the whole, such orders were being pursued appropriately against women defendants."⁷⁰ The

⁶¹ See e.g See Flat Out Inc, Submission to Royal Commission into Family Violence, (29 May 2015) available at <<http://www.flatout.org.au/wp-content/uploads/2012/04/Flat-Out-Submission-RCFV-FINAL.pdf>> (accessed 5 May 2022).

⁶² S Dyson, P Frawley, and S Robinson, "Whatever it takes": *Access for women with disabilities to domestic and domestic violence services: Final report* (ANROWS Horizons, 05/2017); Patsie Frawley, Sue Dyson, Sally Robinson and Jen Dixon: 'What does it take? Developing informed and effective tertiary responses to violence and abuse of women and girls with disabilities in Australia' (ANROWS, 2015).

⁶³ L Dowse, K Soldatic, A Didi, C Frohmader, and G van Toorn, 'Stop the violence: *Addressing violence against women and girls with disabilities in Australia. Background paper* (2013, Hobart: Women With Disabilities Australia).

⁶⁴ Dyson, Frawley and Robinson, above.

⁶⁵ Ibid.

⁶⁶ See e.g L Arai, A Shaw, G Feder, E Howarth, H MacMillan, THM Moore, A Gregory, 'Hope, Agency, and the Lived Experience of Violence: A Qualitative Systematic Review of Children's Perspectives on Domestic Violence and Abuse', (2021) 22(3) *Trauma, Violence, & Abuse*, 427–438 ; N Ghafournia, and P Easteal, 'Help-Seeking Experiences of Immigrant Domestic Violence Survivors in Australia: A Snapshot of Muslim Survivors', (2021) 36 (19-20) *Journal of Interpersonal Violence*, 9008–9034; F Buchanan, and C Humphreys, C 'Coercive control during pregnancy, birthing and postpartum: women's experiences and perspectives on health practitioners' responses', (2020) 36(1) *Journal of Family Violence*, 325–335.

⁶⁷ Australian Bureau of Statistics, 'Crime and Justice: Personal Safety' (2017) Australian Government, available at <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>> (accessed 5 May 2022).

⁶⁸ Alicia Jillard and Julia Mansour 'Women Victims of Violence Defending Intervention Orders: The latest developments in policy and practice in NSW' (2014) 39(4) *Alternative Law Journal* 235.

⁶⁹ Ibid.

⁷⁰ Ibid.

study also found that two thirds of women clients defending domestic violence orders instructed that they were the primary victim of violence in their relationship with the person seeking the order before the court.⁷¹ Further, some clients reported that in their view the other party had ‘deliberately initiated domestic violence orders proceedings as a form of legal abuse or as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.’⁷² The authors conclude from this evidence that there are a number of ways the domestic violence order system can be:

manipulated by perpetrators of violence as a tool to perpetuate abuse through the legal system. It is therefore of crucial importance that women defendants continue to be considered a discrete group of domestic violence victims as reforms to domestic violence policy and practice are considered.⁷³

While these considerations, observations and assumptions cannot be correctly described as ‘causes’ of domestic, family and sexual violence I encourage the Royal Commission to carefully consider these issues when developing its own conceptual approach.

2. *What works, or will work, to prevent domestic, family and sexual violence?*

This question in the Issues Paper also points to the relevance (and potential risks) of developing (or failing to develop) a shared conceptual approach to understanding domestic, family and sexual violence in South Australia. The answers received will be informed by the way the respondent conceptualises of the harm caused by these forms of violence, the agency and identity of the different actors impacted by or using these forms of violence, and the causes of or preconditions to these forms of violence.

From the perspective of the lived experience participants in the *Powerful Interventions* Project, a clear consensus was reached when it comes to improve legal responses to domestic and family violence in South Australia. Those with lived experience in the system said they want the following changes to be made:

1. Call out gender inequality in every aspect of our society. Respect Women.

Stereotypes and beliefs about the roles men and women should play in families and in the community are hurting people and killing women. They are crippling the systems that are supposed to protect women and children from harm. They are stopping us from stamping out violence. They are holding women back from the economic and educational opportunities they deserve.

Gender inequality starts at birth. The minute they are born we tell young females that you are a ‘little girl’ and males that they are a ‘little man’. We are telling males they are more important, superior to females. From birth we are telling males that they are superior. And they hear this message all their life. We are also telling little girls that they are inferior. Our culture is wrong. It’s not just Intervention Orders which are just a band aid. Until you start fixing it from birth, the rest of it is a waste of time.⁷⁴

2. Put victim survivors at the centre. Protect her. Believe her. Empower her. Invest in her. Give her options.

Currently the system is designed with the perpetrator at the centre. His behaviour and responses dictate what happens and when. Victim survivors feel sidelined, ignored, asked to bear the burden of all the

⁷¹ Ibid.

⁷² Ibid, 236-7.

⁷³ Ibid, 240

⁷⁴ Lived Experience interviewee LE9.

work needed to substantiate and enforce an Intervention Order. Some victim survivors need alternative options that will enable them to rebuild and repair relationships. Some victim survivors need police-enforced containment strategies.

I just felt so alone and ashamed and lost. I used to have a good life, an independent life. He's taken it all away from me. I'm in safety housing miles away from everything, with no friends or support. Everyone expects me to rebuild my life from scratch, from here, where I am on Job Seeker payments. D is still going to work each day, still sleeping in his own bed. I've got to sort all this out from here. There's been no repercussions for him. I shouldn't be here.⁷⁵

No legislation is good enough until people with lived experience have been consulted. I don't want the peak bodies being the only ones having a say. All of these people with lived experience are not being heard. They are the ones that have the knowledge. If you need to get 1000 people together you should. It's so important. It needs to be loud and clear in this report, and every review. Don't just speak to the peak bodies, every time you don't go to the coal face you miss the point.⁷⁶

3. Get the first response right.

Some police officers, lawyers, court officials and other service providers are responding with care and knowledge, empowering women. But not everyone gets the first response right. Invest in training that unpacks what 'trauma informed' care really means in practice so that every front-line worker (police officer, registrar, lawyer, social worker) can respond safely, thoughtful and effectively every time.

It's a lotto to see whether you are interacting with a police officer who understands domestic violence or not.⁷⁷

I was told to come back Monday to apply for [an Intervention Order], despite displaying bruises ... at front desk of police station. I insisted that I at least get a card to say I had been there, then left dumbfounded and scared for my children. I was unheard.⁷⁸

I didn't feel like I was taken seriously or believed. [I was] made to feel like I was being judged as hysterical, ridiculous and time wasting. This made me feel unsafe to approach police again which was fairly scary, because they were the place I was supposed to be able to count on to help, and I wasn't sure where else I could go.⁷⁹

4. Respond quickly. Make him leave. Help her stay safe on her terms. Victim-survivor-designed Orders.

Use interim Intervention Orders to separate the perpetrator from the victim survivor and provide immediate protection. Make him leave. Help her stay. Then empower victim survivors to design ongoing orders that *work for them*.

Why are women being told to leave their homes with their children when perpetrators are able to continue to live at home attend work and be part of the

⁷⁵ Lived Experience interviewee LE1.

⁷⁶ Lived Experience interviewee LE9.

⁷⁷ Lived Experience interviewee LE6.

⁷⁸ Lived Experience REDCAP Survey Respondent.

⁷⁹ Lived Experience REDCAP Survey Respondent.

*community? Women have to wake up their children leave their homes to escape violence. They should be the ones to stay. He should be the one to leave.*⁸⁰

*I wish, instead of all these people saying, why don't you leave. I want them to say, 'why did he do it?', 'why didn't he stop'. It's victim blaming. It should be about dealing with the perpetrator's aggression.*⁸¹

*When you are in that moment you are not in charge of anything. You are beholden to the process. You don't want to do anything yourself. You are experiencing the coercive control. You want a person in authority to step up. You want the authorities to confront the defendant about the abuse that's being perpetrated.*⁸²

5. Give victim survivors control over the variation process.

Use risk assessments to empower victim survivors to work with the courts to design or redesign Intervention Orders that work for them. *Never* change orders without input from victim survivors.

*The Magistrate has a responsibility to the protected person to involve them in all the stages. How can they possibly make a decision without having all the information?*⁸³

*There is no lineage in the system and no consistency of service, provision and support from police and other service providers. This leads to victim survivors, constantly having to recap, recount, retell re-prove experiences of abuse and violence. And when this occurs at the junction of a crisis, then the victim has to take on this whole process again and again.*⁸⁴

6. Actively monitor whether the perpetrator is complying with the order and prosecute all breaches quickly.

The victim's behaviour can *never* justify a breach or lessen its seriousness. Every breach violates the victim's safety and demands a legal response.

*Any behaviour that tries to control, manipulate or intimidate another person, either physically or emotionally, should be taken seriously.*⁸⁵

*It is awful, as a survivor of domestic violence and having dealt with in excess of 40 plus breaches only ever resulting in one arrest no charges. I have had to relocate my family seven times since I left domestic violence and we now live remotely to try and keep safe. The system fails. Police won't act. I always get told they don't want to escalate the situation or that they can't act because technically the wording on the order doesn't cover what he has done as a breach it's ridiculous. It is also terrible that perpetrators are allowed to contest orders and drag it out so they can intimidate you in court and instil ongoing fear when they drag you through the process.*⁸⁶

He's dangerous. There's a history of his violent and abusive conduct on the file and reported threats to kill on the file. The big thing is the arson that he's been convicted

⁸⁰ Service Provider interviewee A13.

⁸¹ Lived Experience interviewee LE9.

⁸² Lived Experience interviewee LE6.

⁸³ Lived Experience interviewee LE9.

⁸⁴ Service Provider interviewee A13.

⁸⁵ Lived Experience REDCAP Survey Respondent.

⁸⁶ Lived Experience REDCAP Survey Respondent.

*for and served time for. I'm being dragged through this system. I'm a victim survivor, and it's costing me out of my own pocket to get legal advice because the prosecution do not fulfil their duties.*⁸⁷

7. Design penalties that respond to the needs of the victim survivor first.

Ensure justice responses respond to the psychological profile of the perpetrator and prioritise the safety of the victim survivor. This means sharing data across agencies to better identify repeat offenders and use evidence-based models to address re-offending.

*At the heart of the issue is why isn't the man being held accountable? They wouldn't need so much money spent to domestic violence if the man was held to account.*⁸⁸

*The jails are full of young Aboriginal people. There is a lost generation of Aboriginal people.*⁸⁹

*The fighters for justice, us black women, are physically tired and sick. We need others to step up and fight.*⁹⁰

8. Empower victim survivors to recover and rebuild.

Invest in strategies that recognise the long term impact of all forms of gendered violence, including financial and psychological violence. Make it easier for victim survivors to: get meaningful and stable work or training/education, access long term quality housing, achieve financial security and to rebuild friendships and support networks.

*I think there needs to be a group for people to talk about what they have been through, with people who have been through the same thing, perhaps with social workers there for support.*⁹¹

*I'd really like to see some kind of focal point, resources for [domestic violence] survivors. To support people to rebuild their lives. Getting the universities and tertiary institutions to help with retraining and teaching, employment. Somewhere where people can break back in. Including social life, as well as financial security and employment.*⁹²

These insights do not provide a comprehensive response to the question raised in the Issues Paper, but rather offer an insight into a particular perspective, and particular conceptualisation of the State's responsibilities to protect the rights of South Australians at risk of harm from gender-based violence. I look forward to learning more about the perspectives of other experts, front line service providers and those with lived experience in response to this question. I also strongly encourage the Royal Commission to seek detailed information from the South Australian Police, South Australian Prosecutors and South Australian Judges in response to this question. Without such information, it will be challenging for non-government organisations and external experts to have a clear sense of how the *state* conceptualises of domestic, family and sexual violence. This is one of the missing pieces of the puzzle in current discourse about this issue in South Australia.

⁸⁷ Lived Experience interviewee LE8.

⁸⁸ Lived Experience interviewee LE1.

⁸⁹ Service Provider interviewee A13.

⁹⁰ Service Provider interviewee A13.

⁹¹ Lived Experience interviewee LE3.

⁹² Lived Experience interviewee LE9.

4. What systems, including systems outside of government, receive information which may allow for the identification of individuals who are at high risk of experiencing or perpetrating domestic, family and sexual violence?

A range of high-quality specialist services – engaging a broad range of professionals with expertise and experience in trauma informed care, legal advice, health care, mediation services and social services – are available to people experiencing family and domestic violence in South Australia.

Many respondents to the *Powerful Interventions* Report identified these services as providing high quality, personalised and effective responses to their needs. Others have expressed the view that while initially without access to support, once they connected with one of the specialist family and domestic violence services in SA, their experience with the Intervention Orders system significantly improved. However, not all victim survivors are aware of and/or able to access support and many experience family and domestic violence for years before connecting with or being referred to specialist services.

For example, good quality information about Intervention Orders has been produced but is not always available to victim survivors. In addition, not all information accurately explains the realities of the process of applying for an Intervention Order, and the consequences for the protected persons if an Intervention Order is issued and potentially breached. Many people only learn about the Intervention Orders system in the context of experiencing trauma, violence or abuse which can limit their ability to absorb and understand key information. Often Intervention Orders are discussed or considered in the context of other legal proceedings, including child protection proceedings, Family Court proceedings or criminal law proceedings, leading to potential confusion about how the different systems intersect.

Many Aboriginal and culturally and linguistically diverse (CALD) people are not able to access culturally appropriate support or information in their first language, despite the best efforts of specialist services.

First responders (including police, lawyers, health care providers, and other service providers) vary in the quality of support and information they provide to victim survivors and in their understanding of family and domestic violence and the Intervention Orders system. Not all first responders are displaying evidence of clearly understanding the existing Intervention Orders laws or the complex causes and consequences of family and domestic violence.

The *Powerful Interventions* Report suggests that the experience a victim survivor has when she seeks the assistance of a first responder can define her subsequent participation and experience within the justice system.

6. What interventions should be considered to manage the risk of a person who is identified as being at high risk of experiencing or perpetrating domestic, family and sexual violence?

I have included an overview of the South Australian Intervention Orders regime as an **Appendix** to this submission. It constitutes the primary legal mechanism relied upon to manage the risk of a person who is identified as being high risk of perpetrating domestic and family violence in South Australia.

The *Powerful Interventions* Project found that in order to improve the effectiveness of this legal tool, it was imperative to increase access to these Orders by those at high risk of experiencing domestic and family violence. It was noted that since 2009, considerable efforts have been made to improve the procedural aspects of accessing and enforcing Intervention Orders in South Australia.⁹³ Interim

⁹³ The *Intervention Orders Act* which came into force in December 2011. This legislation repealed the *Domestic Violence Act* and parts of the *Summary Procedure Act 1921* (SA) that previously governed the making of personal restraining orders in South Australia. The *Intervention Orders Act* was introduced following the public release of a discussion paper commissioned by the South Australian Government from barrister Maurine Pyke QC and a simultaneous review of domestic violence laws

Intervention Orders can be obtained quickly and cheaply by police officers at the time a disturbance or incident of abuse is reported to police or obtained directly by a person experiencing abuse from the Magistrates' Court without requiring the defendant to be present to give evidence or to cross examine the applicant.⁹⁴ These procedural reforms have also been accompanied by additional funding for the Magistrates' Court to establish the position of Magistrates' Court Intervention Program Abuse Prevention Program Case Manager, who plays an important coordination role managing the domestic and family violence related case load across the South Australian Magistrates' Courts.⁹⁵ The coordinating magistrate is also responsible for ensuring court procedures and rules are appropriate and fit for purpose, identifying any problems with legal issues and bringing these to the attention of the Attorney General and facilitating professional development to other magistrates.⁹⁶ Efforts have also been made by the Courts Administration Authority to help explain the procedures associated with applying for an intervention order in accessible, plain English formats.⁹⁷

This investment in specialised processes and magistrates has coincided with similar investments within the South Australian Police Force, including the appointment of domestic violence officers that are directly involved in internal police procedures relating to the issue, withdrawal, revocation and enforcement of Intervention Orders in South Australia.⁹⁸ Considerable investment has also been provided to improve the quality of risk assessment tools and to train police officers in areas of domestic and family violence and trauma informed approaches. As the South Australian Police's 2015–16 annual report explains:

In 2015-16, the South Australian Police began rolling out the Domestic Violence Investigators Course for all specialists attached to Family Violence Investigations Sections, and other areas where this specialist skill is required. The Multi Agency Protection Service (MAPS) is an ongoing integrated information sharing model to manage domestic violence and related child protection matters. MAPS currently shares information on all high risk domestic violence matters and a small percentage of medium and standard risk matters between the South Australian Police, the Department for Correctional Services, the Department for Education and Child Development, the Department for Communities and Social Inclusion, and SA Health.⁹⁹

In South Australia, high quality, free legal information and advice is provided by the Women's Safety Services SA (WSSSA) which supports women and their children who are experiencing domestic and family violence and makes referrals to appropriate legal services, including specialist women's legal services.¹⁰⁰ Other specialist legal and support services currently available to women seeking to access the Intervention Order regime include the Women's Domestic Violence Court Assistance Service

by the Victorian Law Reform Commission (resulting in the enactment of the Victorian *Family Violence Protection Act 2008*). The *Intervention Orders Act* was subsequently amended in 2015 by the *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Bill 2015 (SA)* which was designed to 'assist in the continued effective operation of the legislation as well as implement an election promise and address concerns raised by the decision of Justice Peek in *Police v Siaoosi* [2014] SASC 131'.

⁹⁴ *Intervention Orders Act* ss 28–9.

⁹⁵ Office for Women, *Committed to Safety: A Framework for Addressing Domestic, Family and Sexual Violence in South Australia* (Report, 2018) <https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0007/78604/Committed-to-Safety.pdf>.

⁹⁶ 'Magistrates Court Civil (General) and Civil (Minor) Claims Divisions Fees', *Courts Administration Authority South Australia* (Web Page, 1 July 2022) <<https://www.courts.sa.gov.au/rules-forms-fees/fees/magcourt-civil-genminor-fees/>>.

⁹⁷ See, eg, *Intervention Orders Applications — Stop the Violence (Legal Services Commission South Australia, 2018)* <<https://lawhandbook.sa.gov.au/ch21s07s02s15.php>>.

⁹⁸ Office for Women, above n 95.

⁹⁹ South Australian Police, *Annual Report 2015–2016* (Report, 2017) <https://www.police.sa.gov.au/_data/assets/pdf_file/0020/363215/Annual-report-2015-2016.pdf>.

¹⁰⁰ Women's Safety Services SA ('WSSSA') has a range of programs and services over numerous sites to assist people in South Australia, including the Domestic Violence Crisis Line. In its 2019–20 annual report, the WSSSA reported that it assisted 6,679 clients, including 799 from culturally and linguistically diverse ('CALD') backgrounds and 938 First Nations women.

(WDVCAS)¹⁰¹ the Women's Legal Service, the Legal Services Commission, Southern Community Justice Centre, Northern Community Legal Service and Westside Lawyers, Aboriginal Legal Rights Movement, Uniting Communities Legal Clinic, and Centre Care Family Mediation Services.

Past scholarship suggests that these services are likely to be integral to the success of any legislative reforms or changes to the Intervention Orders regime in South Australia as they provide the crucial interface between the person with lived experience of domestic and family violence and the legal system.¹⁰² However, as discussed further below, despite these efforts, many participants in the *Powerful Interventions* Project have articulated serious and sustained shortcomings in the implementation of the Intervention Orders system in South Australia, particularly when it comes to the 'first response' victim survivors encounter when seeking to access the Intervention Order regime, or report a breach.¹⁰³ For example, one research participants said: 'It's a lotto to see whether you are interacting with a police officer who understands domestic violence or not'.¹⁰⁴

Process and Criteria Applied when Granting and Approving Intervention Orders

The current legal test for granting an Intervention Order is generally seen as appropriate, however the pathways for accessing an interim Intervention Orders are very different and give rise to different experiences for victim survivors and protected persons.

Police-issued Intervention Orders can lead to a lack of control for the victim survivor and can demand a higher threshold of evidence of abuse or violence. Private Intervention Orders can facilitate more victim survivor control over the process and a more positive experience if high quality, specialist legal advice can be accessed. Although filing fees have now been waived, cost issues may still arise when applicants require private legal representation in circumstances where specialist legal services are limited. This can be exacerbated where proceedings relating to Intervention Orders intersect or overlap with Family Court proceedings.

Withdrawal of Intervention Order applications can be a sign of success – the victim survivor or protected person may have found another way to achieve safety (such as a Family Law settlement or alternative housing or independent income). However, withdrawals of Intervention Order applications can also be a sign of protected persons experiencing difficulties collecting and presenting evidence, especially in the context of police issued Intervention Orders.

The issue of what counts as admissible evidence of family and domestic violence should be reconsidered to ensure it is victim-focused and trauma informed.

There are also underlying issues surrounding the role of Intervention Orders in the context of family or relationship breakdowns. For example, the ability of the parties to the order to negotiate or develop

¹⁰¹ The Women's Domestic Violence Court Assistance Service (WDVCAS) is a specialist legal service, operated by the Legal Services Commission, providing support to women affected by domestic and family violence. Women can receive free legal assistance to navigate the Magistrates' Court processes of applying for, changing, or removing an Intervention Order. Assistance can also be provided in reporting breaches of an Intervention Order.

¹⁰² See, eg, Debra Spizzo and Frankie Rodney, 'Guiding Victims through the Legal Process: The First Year of the Women's Domestic Violence Court Assistance Service' (2016) 38(8) *The Bulletin* 22, 22–3; Mary Iliadis, Kate Fitz-Gibbon and Sandra Walklate, 'Improving Justice Responses for Victims of Intimate Partner Violence: Examining the Merits of the Provision of Independent Legal Representation' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 105; Angela T Ragusa, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors' Perceptions of Criminal Justice Support Services' (2013) 28(4) *Journal of Interpersonal Violence* 685, 685–717; Donna Roberts, Peter Chamberlain and Paul Delfabbro, 'Women's Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis' (2015) 22(4) *Psychiatry, Psychology and Law* 599, 599–615.

¹⁰³ Moulds and Yohanesh (n 1) Lived Experience interviewee LE6.

¹⁰⁴ *Ibid.*

meaningful, targeted conditions can vary greatly with flow-on implications for compliance and utility of the order. Often what the applicant is looking for is immediate protection from harm, but as the immediate threat subsides, there can be a need to reconsider the nature of the conditions imposed and the impact they may have on repairing family relationships.

Breaches of Orders and Penalties

There is a general lack of awareness among many key participants in the Intervention Orders system, including front line service providers, about the maximum penalties for breaching an Intervention Order. However, almost all respondents indicated that current approaches to enforcing Intervention Orders and promoting compliance with Intervention Orders are ineffective.

While some police officers and other first responders provide high quality responses to reports of breaches, many research participants have explained that reporting breaches to police can be problematic due to the high threshold generally applied by police to establishing patterns of abusive behaviour and the need to establish evidence of non-physical violence and/or coercive control.

Police and prosecution responses to reports of breaches are inconsistent and often inadequate, with some exceptions where police and prosecution officers have received specialist family and domestic violence training.

Some research participants expressed the view that there appears to be an ‘unwritten policy’ being applied by some police when it comes to breaches of Intervention Orders, where instances of non-physical violence abuse are not considered as violence and/or taken seriously and/or perpetrators are given warnings for ‘minor’ breaches instead of being referred to court.

A number of research participants described how community co-designed responses to family and domestic violence – that focus on identifying and responding to the impact of all forms of violence on all individuals involved, including the defendant – could be employed to help improve the capacity of the Intervention Order system to meet its objectives.

While custodial penalties are considered to be an important optional component of an effective response to breaches of Intervention Orders, particularly in the case of repeat offenders, there is a need to ensure the court retains discretion to tailor penalties and consequences to meet the needs of protected persons, prioritising short term and long term safety of protected persons.

There is also a lack of evidence that maximum penalties are being/have been imposed by courts or sought by the Director of Public Prosecutions.

Often sentencing for breach of Intervention Orders occurs concurrently with sentencing for other criminal matters including criminal offences like assault and/or breaches of parole or bail or home detention conditions. This makes it difficult to isolate and evaluate the impact on any Intervention Order related component of the total sentence.

Court issued behavioural change programs and other perpetrator intervention programs are highly valued in theory, but their practical utility and effectiveness can be undermined when there is a lack of detailed feedback provided to or sought by the court about the quality of the participant’s engagement with the program and the likelihood that the participant will cease offending in the future.

Existing behavioural change programs and other perpetrator intervention programs require regular, independent evaluation to determine their effectiveness at meeting the needs of participants, having regard to best practice.

7. What are the barriers to reporting domestic, family and sexual violence to police or seeking support from domestic, family and sexual violence services?

Many research participants in the *Powerful Interventions* Project noted with respect the important and often extremely challenging role police officers play in the system and the South Australian response to family and domestic violence. There was an acknowledgement of the many individuals within the system who are working tirelessly to protect women, children and others from harm often in the context of limited resources and threats to personal safety.

For most respondents, police play *the* central role in the Intervention Orders system. Their response to incidents or reports of family and domestic violence, requests for information about Intervention Orders or requests for Intervention Orders to be issued often defines people's experiences of the Intervention Orders system.

An overwhelming number of research participants described substandard police responses to family and domestic violence and a lack of understanding of the Intervention Order laws and of family and domestic violence by police officers. Some of these accounts were particularly traumatising. However, some respondents have said that police officers provide high quality responses and treat applicants and protected persons with respect and care. For example, many research participants said that they had more positive experiences with police officers from within the Family and Domestic Violence Unit. Others suggested that female police officers provided a more culturally appropriate response. Many research participants pointed to the need for all first responders to undergo mandatory and specific training to understand the full range of manifestations of family and domestic violence, and the varied ways in which victim survivors may interact with police officers and other authorities. This includes having regard to the cultural identity and cultural needs of Aboriginal women, and women from Culturally and Linguistically Diverse (CALD) backgrounds, and the complexities associated with providing independent advice and support to women at risk in these environments.

Some court staff provide high quality services and demonstrate understanding of family and domestic violence, but in-court experiences for victim survivors and protected persons are variable and can sometimes be traumatic, particularly if the protected person does not have access to specialist legal advice or other support. For example, court mediation services, such as those provided by Centacare, are important forums to help clients interpret and understand and to help facilitate conversations between parties about their children, who may also be protected under the orders. However, the collection and presentation of evidence to support Intervention Order applications can be problematic particularly for victim survivors who have or are still experiencing trauma, are not represented by specialist legal practitioners and/or when the family and domestic violence is non-physical.

The family and domestic violence Specialist Courts can provide a positive experience for victim survivors, particularly when it comes to providing evidence and understanding the process. These courts tend to utilise the full range of provisions contained in the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) that are designed to facilitate Intervention Orders hearings that respect and support the rights and interests of protected persons. However, not all Magistrates demonstrate an awareness or willingness to utilise these provisions in Intervention Orders related matters. In addition, not all Aboriginal and CALD people are provided with appropriate access to professional, independent and accessible interpreter services for all stages of the Intervention Order court process.

Complex family and community relationships within Aboriginal and CALD communities can influence the extent to which individual experiences of family and domestic violence are able to access support services, report abuse to police and apply for Intervention Orders. Some individuals may have had negative experiences with child protection authorities and/or with police or may face isolation from their communities if they seek to engage with the Intervention Orders system. However, when specialist, culturally appropriate support is provided, individuals within these communities have been able to speak out against family and domestic violence and access legal protections for themselves and their children.

Definitional and procedural barriers

In addition to the barriers described above, there are also specific components of the existing legal framework governing access to and use of Intervention Orders that present barriers for their effectiveness as a tool to prevent and respond to domestic and family violence. For example, while the South Australian definition of ‘abuse’ within the *Intervention Orders Act* is broad enough to encompass non-physical forms of abuse and coercion, in practice concerns have been raised about the extent to which these forms of violence are taken seriously by law enforcement authorities. For example, one of the service provider focus groups in the *Powerful Interventions Project* explained:

The Police have a policy of not assisting client/victims to obtain an Intervention Order at all unless there is evidence of physical abuse. This is despite the fact that the legislation defines abuse in broad terms. ... As the Intervention Orders Act expands, the South Australian Police need to adjust their policies and guidelines.¹⁰⁵

This would appear to align with the observations of Hilder and Bettinson who explain that:

Legal perspectives tend to be more familiar with the term ‘domestic violence,’ which is used to encompass a range of physical and sexual acts of harm, but now also includes behaviours of harassment, sustained non-physical intimidation psychological and emotional abuse. However, for others it implies a reliance on the more tangible evidence of physical or sexual assault, and terms such as domestic, violence and abuse and intimate partner violence and abuse are used elsewhere to represent a more nuanced understanding of a broader range of victim/survivor experiences.¹⁰⁶

This has led for calls for specific legislation to criminalise ‘coercive control’ in South Australia, including by Katrine Hildyard MP who introduced the Criminal Law Consolidation (Coercive Control) Amendment Bill in 2020. This was followed by the release of a draft Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 (SA) by the South Australian Government in September 2021. This draft legislation remains under active consultation in South Australia.¹⁰⁷

Evidential issues can also play an important role in decision making by applicants, with physical violence generally being much easier to prove, than more subtle forms of abuse, which may require a broader range of evidence including from a broader range of witnesses (including in some instances, the children of the applicant).¹⁰⁸ Applicants may not be willing to ask their friends, neighbours, medical practitioners, family or work colleagues to provide the relevant evidence needed to substantiate the application.¹⁰⁹

As noted above, the failure of police and courts to take breaches of Intervention Orders seriously has also been cited as a widespread concern in past studies in other jurisdictions.¹¹⁰ For example, in a 2017 study Taylor et al found that ‘[m]ore than half of all respondents in each category of professional group (64% of police, 55% of magistrates, 64% of lawyers, 80% of victim advocates) felt that perpetrators “often” or “always” avoided taking domestic violence order breaches seriously’.¹¹¹ In the same study, half of police surveyed identified ‘administrative procedures

¹⁰⁵ Moulds and Yohanesh (n 1) Service Provider interviewee A5.

¹⁰⁶ Sarah Hilder and Vanessa Bettinson, ‘Introduction’ in Sarah Hilder and Vanessa Bettinson (eds), *Domestic Violence* (Palgrave Macmillan, 2016) 1.

¹⁰⁷ See South Australian Government, *yourSAy Website* ‘Coercive Control’ (2023) <<https://yoursay.sa.gov.au/coercive-control>>.

¹⁰⁸ See, eg, Nancarrow et al, above n 35; James C Roberts, Loreen Wolfer and Marie Mele, ‘Why Victims of Intimate Partner Violence Withdraw Protection Orders’ (2008) 23(5) *Journal of Family Violence* 369, 369–75.

¹⁰⁹ See, eg, Nancarrow et al, above n 35.

¹¹⁰ Kristen Diemer et al, ‘A “Double Edged Sword”: Discretion and Compulsion in Policing Domestic Violence’ (2017) 18(4) *Police Practice and Research* 339.

¹¹¹ Annabel Taylor et al, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information-Sharing and Enforcement with a Focus on Interstate Orders: Key Findings and Future Directions* (Report No 7, October 2017).

associated with breaches’ (55%), ‘limited resources available to police’ (50%), and ‘high volumes of police workload’ (47%) as factors affecting their ability to respond to domestic violence order breaches.¹¹²

A 2017 Victorian-based study found that police training was critical to addressing stereotypical assumptions by police officers about domestic violence victims and perpetrators and found that those police officers that had undertaken domestic violence training were able to better identify domestic violence risk factors including history of violence, levels of fear, threats and other risks such as pregnancy.¹¹³ The study also found that the following key factors were particularly significant when seeking to improve police responses to domestic violence:

- training supervision and access to family violence specialist officers;
- supervision ensuring compliance with the Code including routine checks of officers decision making and authoritative advice on how best to respond to complexities inherent in domestic violence;
- the development and use of a Safety Notice system;
- ready access to specialist Family Violence Liaison Officers; and
- a coordinated approach to supporting applicants and protected persons during court processes.¹¹⁴

These observations align closely with the key findings of the *Powerful Interventions Project*.

Complex interaction between different types of legal orders

The *Powerful Interventions Project* focused predominantly on Intervention Orders, however, there are a range of other legal orders that can be issued or enforced to protect against domestic and family violence. These include injunctive orders made under ss 68B and 114 of the *Family Law Act*. These orders can be made by the Federal Circuit and Family Court of Australia (‘FCFCA’) for the personal protection of the child or a parent of the child and can restrain another person from entering or residing in a place of residence or education of the child, among other matters. However, these orders are civil in nature and are not criminally enforceable. As the Attorney-General’s Department has explained:

This means that the onus is on the aggrieved party to bring a private action against the perpetrator for contravention of the injunction in the family law courts. The dynamics of power and control in relationships involving family violence can make this difficult for the victim.¹¹⁵

The FCFCA is also empowered to make a range of parenting orders under pt VII div 4 of the *Family Law Act* that can have significant impact on the relationship between two parties who may be experiencing relationship breakdown and sometimes domestic or family violence. These orders can, for example, prescribe the time a child is to spend with a particular parent or other person, and the communication a child is to have with a parent or other person.¹¹⁶

Under the South Australian *Intervention Orders Act*, these parenting orders (and other orders made under the *Family Law Act*) must be taken into when determining whether it is appropriate to issue

¹¹² Ibid.

¹¹³ Diemer et al, above, 347.

¹¹⁴ Ibid 347–9.

¹¹⁵ Attorney-General’s Department, Submission No 6 to the Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021* (22 July 2021).

¹¹⁶ *Family Law Act 1975* (Cth) s 64B(2) (‘*Family Law Act*’).

an intervention order and when determining its terms.¹¹⁷ In addition, an applicant for a Intervention Order must inform the Magistrates' Court of any relevant *Family Law Act* orders, any pending application for such an order, and any other legal proceedings between a person proposed to be protected by the order and the defendant.¹¹⁸ Then, if the Magistrates' Court determines that it is appropriate to confirm an interim intervention order as a final intervention order, and the defendant is a child or the parent of a child, the Magistrates' Court must check whether there is any relevant *Family Law Act* order in place and consider how the final intervention order would be likely to affect contact between the protected person or the defendant and any child in their care.¹¹⁹ The Magistrates' Court must also take steps necessary to avoid any inconsistency between the Intervention Order and any *Family Law Act* order.¹²⁰

While technically any South Australian Intervention Order is considered 'invalid to the extent of any inconsistency with a Family Law Act order of a kind referred to in section 68R of the *Family Law Act 1975* (Cth)',¹²¹ the South Australian Magistrates' Court is given power under s 68R(1) of the *Family Law Act* to revive, vary, discharge or suspend a relevant *Family Law Act* order, provided it also makes or varies a family violence order in the proceedings.¹²²

In addition, s 69ZK of the *Family Law Act* provides that state and territory child welfare laws and orders made under those laws take precedence over FCFCA orders. This includes orders made by the South Australian Youth Court under the *Children and Young People (Safety) Act 2017* (SA),¹²³ and under the *Criminal Procedure Act 1921* (SA)¹²⁴ which can include an order restraining a non-guardian adult who has been living with a child from living with or having any contact with the child. These orders must also be taken into account by the Magistrates' Court when exercising powers under the *Intervention Orders Act*.¹²⁵

Intervention Orders can also co-exist with or interact with conditions of bail imposed under s 23A of the *Bail Act 1985* (SA).¹²⁶ In addition, since November 2017, domestic violence orders issued in other Australian States and Territories have also been recognised and enforced in South Australia as part of the National Recognition of Domestic Violence Order Scheme.¹²⁷

New criminally enforceable federal family violence orders have also been enacted¹²⁸ that allow for the FCFCA to make a criminally-enforceable federal family violence order where the Court is satisfied that family violence has already taken place or there are reasonable grounds to suspect that it is likely that family violence will take place, or that a child may be exposed to family violence.¹²⁹

¹¹⁷ *Intervention Orders (Prevention of Abuse Act) 2009* (SA) s 10 ('*Intervention Orders Act*').

¹¹⁸ *Ibid* s 16.

¹¹⁹ *Ibid* s 23.

¹²⁰ *Ibid*.

¹²¹ *Ibid* s 16.

¹²² *Family Law Act* s 68R(3).

¹²³ *Children and Young People (Safety) Act 2017* (SA) s 53.

¹²⁴ *Criminal Procedure Act 1921* (SA) s 99AAC. Before granting such an order, the court must be satisfied that the child's contact or residence with the adult puts him or her at risk of sexual, physical, psychological or emotional abuse or neglect.

¹²⁵ *Intervention Orders Act* s 16.

¹²⁶ See *ibid* s 9.

¹²⁷ *Ibid* pt 3A; see also '[National Domestic Violence Order Scheme](https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme)', *Attorney-General's Department (Web Page)* <<https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme>>.

¹²⁸ Family Law Amendment (Federal Family Violence Orders) Act 2022 (Cth).

¹²⁹ The court would also be required to take into account other matters in making an order, including as the primary consideration, the safety and welfare of the child or protected person, as well as any additional considerations the court considers relevant, such as the criminal history of the person against whom the order is directed. The order may provide for the personal protection of a child or a person related to a child, such as their parent or a person who has parental responsibility for the child, or a party to a marriage.

Navigating the complex relationship between these laws can be exceedingly difficult for those experiencing domestic and family violence, particularly for those unable to access specialist legal advice and support.¹³⁰ The intersection of these laws can also give rise to opportunities for perpetrators of domestic and family violence to exercise coercive control over victims, for example by using the Intervention Orders regime to restrict parental access to children or initiating court proceedings as a form of coercive control.¹³¹ As the *National Domestic and Family Violence Bench Book* explains:

Where the parties to protection order application proceedings are also engaged, or likely to be engaged, in family law proceedings, tensions or inconsistencies may arise between the purpose and effect of a protection order made by a court of summary jurisdiction and a parenting order made by [the FCFCFA]. On the one hand, the protection order may direct the perpetrator to keep away from the victim and any protected children. On the other hand, the parenting order may stipulate that the protected children spend time with or live with the perpetrator. In some circumstances it may be appropriate for magistrates to vary existing parenting or other orders under the Family Law Act.

There may also be circumstances where, for example, in the absence of parenting orders, a victim obtains a protection order naming her children as protected people, and the perpetrator (the father of the children) subsequently applies to the [FCFCFA] for parenting orders so that he may have contact with his children otherwise disallowed under the protection order. Judicial officers should be aware when making protection orders naming children as protected people in these circumstances that there may be a considerable delay before parenting matters, including contact, can be dealt with by the [FCFCFA], and that the new status quo established by the protection order may impact on the outcome of any subsequent parenting proceedings.¹³²

It is also relevant to note that parties involved in family law parenting proceedings pursuant to the *Family Law Act* usually have to have regular contact with each other, including directly in the form of communications about handover, child illness, major long-term decisions including those relating to the child's education.¹³³ Knowing that they will have to be in contact with the other party, and fear of the potential ramifications from the other parent — including an exacerbation of conflict in relation to the [FCFCFA] proceedings — can provide very significant barriers for women and others seeking to escape family or domestic violence by seeking an Intervention Order.¹³⁴

In this context, it is not surprising that past research into the intersection of these laws warns against making legislative changes to one component of this complex legal framework without fully exploring the implications for other components within the system.¹³⁵ This is consistent with the perspectives shared by those with lived experience of the Intervention Orders system in South Australia.¹³⁶ For example, one research participant with experience providing legal advice to women at risk of domestic and family violence said that:

It can be really confusing for women [the intersection between FCFCFA access orders and state-level intervention orders] and it seems like it's really hard to get children added to an intervention order

¹³⁰ See, eg, Family Law Council, *The Best Interests of the Child? The Interaction of Public and Private Law in Australia* (Discussion Paper, 2000) [3.9]; Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (Report, December 2009) [7.3.5].

¹³¹ See, eg, Marilyn McMahon and Paul McGorery, *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020); Iliadis, Fitz-Gibbon and Walklate, above.

¹³² 'Protection Orders', *National Domestic and Family Violence Bench Book* (Web Page) <<https://dfvbenchbook.ajja.org.au/protection-orders/related-family-law-proceedings/>>.

¹³³ This includes interactions with the Family Dispute Resolution process under the *Family Law Regulations 1984* (Cth) reg 25.

¹³⁴ Patricia Easteal, Jessica Herbert and Jessica Kennedy, 'Collaborative Practice in Family Law Matters with Coercive Control-Type Family Violence: Preliminary Thoughts from the Practitioner Coalface' (2015) 5(1) *Family Law Review* 13, 13–33; Evan Stark and Marianne Hester, 'Coercive Control: Update and Review' (2019) 25(1) *Violence Against Women* 81, 81–104.

¹³⁵ See, eg, Iliadis, Fitz-Gibbon and Walklate, above.

¹³⁶ Moulds and Yohanesh (n 1) 45–7.

after it's been issued. Even if they're really highly at risk, it seems like you get this one opportunity. If the police show up and the woman at the scene appears to be directly impacted, they might issue one. But, later, if it's just the woman who's got the intervention order, we might do a risk assessment that shows that everyone's highly at risk, but it can be very difficult to add the children to the order later. Then there's the [FCFCA] orders overriding the state-based legislation - it feels like those systems need to be talking to each other so much better and that safety should come first over the idea that a parent should have the right to see the children.¹³⁷

These suggestions are reflected in the key findings and recommendations in the *Powerful Interventions Project*.

10. What are the elements of a best practice police response?

When asked about the most important things to keep in mind when police or court officials are talking to people who want to apply for or enforce Intervention Orders, respondents in the *Powerful Interventions Project* referred to the need to provide:

- Trauma informed, family and domestic violence informed approaches to communication and service provision.
- Adequate resourcing for police and courts so that they can support survivors of family and domestic violence.
- Clear concise information about the legal process and the short term and long term consequences of applying for an obtaining an Intervention Order.
- Clear concise information about what an applicant will need to do at each stage of the process, and what they can expect the police to do at each stage of the process.
- Adequate and consistent responses to investigating and prosecuting breaches of Orders, in line with the text of the legislation.
- A safe space for women and children to share their experiences and to be believed.
- Responses to reports of violence and abuse that use non-judgemental language and avoiding making assumptions.
- Referrals for free legal advice from a community legal centre or legal service commission before an application is submitted.
- Honestly describe the likely outcomes and risks to potential applicants.
- Access to interpreters and cultural support for persons of CALD backgrounds.

One respondent to the Service Provider Survey said that the most important factor was to ensure that:

Respect [is] given to the victims- at the moment they are not respected, unless you are referring to victims of the narrow definition applied by the South Australian Police as to [domestic violence] and can prove physical violence. -Listen to a victim- victims can be terrorised and stalked by perpetrators over long periods of time, but these victims are not listened to or given the 'time of the day' by South Australian Police officers- until he has finally assaulted the victim or actually attempted to murder the victim. -Given a victim a voice- in the courts process, allow a victims voice to be heard. For instance, actually take a victim impact statement and read it out in court (this does not happen in the lower courts). -If a victim flees the state due to terror of the perpetrator- the South Australian Police to not drop the Intervention Order and the criminal charges laid against a perpetrator because the victim is not in the State so the South Australian Police does not need to waste resources following up with the victim interstate (this often happens). The South Australian Police will withdraw the Intervention Order and the charges with officers stating in court that the South Australian Police cannot 'find' the victim- despite the victim having told the police where they are now living. The officer will simply withdraw as it is 'too hard' to chase a victim if she is interstate. This can be termed all sorts of things but it comes down to police resourcing- money saving.

¹³⁷ Ibid 48.

Other respondents underscored the importance of providing an environment where the victim survivor is supported and believed, regardless of their demeanour:

The person they are talking to has likely experienced significant trauma and deserves gentle listening. If in doubt, lean on the side of believing their story. It takes huge courage to talk to another person about this.

They need to listen to the person and provide them with time to speak and provide a history of incidents that have occurred. They also need to be aware that not every female that requires an Intervention Order to protect them or their children will appear distressed or traumatized. Some females have endured years of domestic abuse and have learnt to endure same and their presentation may not reflect the serious risk they are in of being subjected to further violence and/or death.

When describing their interactions with police in the context of the South Australian Intervention Orders system, many respondents reported frustration at the lack of consistency in police responses to reports of family and domestic violence, noting the significant difference in experiences when police officers demonstrated knowledge of trauma informed response models and/or understanding of the complexities associated with coercive control and other forms of non-physical abuse. For example, some respondents said that:

Several clients could attend with same situation, but receive very different responses depending entirely on which officer they happen to get. It seems to be entirely dependent on officer's own belief system, values or perception of the client compared to the actual situation/circumstance.

Its a very mixed response. Some are fantastic and go above and beyond. some are very dismissive and victims really have to fight for help.

[Police responses are] varying from dismissive to polite but unhelpful. Many referrals to our service some from officers who are obviously concerned about the applicant's safety but are constrained by police policies.

Some are trauma-informed and pragmatic. Others are rigid and dismissive. Element of victim blaming in the approach taken by the latter. No consistency.

Staff within the Family Violence Investigation Section at the South Australian Police in our local area are brilliant - I can't speak highly enough about their assistance and support for victims. They are, however, run off their feet.

I have had a mix of very positive interactions and some very negative ones. In my experience, victim blaming by police is common toward women who experience domestic violence.

The Family Violence Investigation Section in the South Australian Police are good to deal with. Other interactions are varied and really depend on the police officer. Some police officers are very compassionate and understanding, while others are the opposite.

These variations in experiences were also noted by one of the service provider focus groups, which explained that

If a client is lucky enough to get through to the [Family Violence Investigation Section] then they need more information from police about what has happened, what matters have been followed up. Client/victims are often in a distressed state. They might have made a statement to the police but only about half of the clients we see say they receive adequate information about what's happening to their matter. This applies not just to Intervention Orders but also to any criminal offences. This goes to the heart of her safety out in the community. She has gone to the authority that is supposed to help her, got through the first gate, and is then told "go away, we'll be in touch". The interface between the authority and the client breaks down.¹³⁸

¹³⁸ Service Provider interviewee A5.

This view was also shared by a Service Provider interviewee who works in a regional area. The interviewee explained that:

There are some amazing crew. Because we are [in a regional area] we often get people come here for a couple of weeks and then go. There can be really different reactions when reporting breach and non-physical abuse.

...

There is a real difference between the police officers who have access to [domestic violence] training and those who haven't. The South Australian Police's Family Violence Team is really up to speed with this stuff, but then there's some other blokes back the station that take a really different approach.¹³⁹

Another service provider interviewee also expressed the view that there is a disparity of skills among police

The [Family Violence Investigation Section] often provides an excellent first response and follow up with victims. Victims feel like they've been heard and listened to and they get the best information so it's imperative that first responders have trauma-informed responses and family violence-informed responses. This could mean the difference between someone who has a careful private conversation with victim of domestic violence compared to a police officer who just hands out a flyer. It has happened that victims were reported by the perpetrators as being aggressive and general duty police officers did not respond appropriately.¹⁴⁰

There is a need to make sure that all women are told about their rights to get information and their rights to get legal representation and to be told about the range of different services that exist to support people.¹⁴¹

When applicants or potential applicants interact with officers from the [Family Violence Investigation Section] of the South Australian Police – who have received this training – their experiences are generally more positive. They are also more likely to be provided with appropriate information and/or referrals to appropriate services. Follow up interactions are also undertaken to support applicants through the intervention order application process.¹⁴²

This can lead to some lawyers and support providers to suggest that the client bypass the front counter of the police station and go straight to the [Family Violence Investigation Section].¹⁴³

Another Service Provider interviewee said:

Some clients have had some really good experiences, but there's also been times when the experiences of interacting with the police have not been positive. Victim survivors can struggle to have the opportunity to prove abuse or violence or the opportunity to prove a breach of the order. Sometimes victim survivors have had to install cameras and other surveillance devices or equipment around their home to try and catch every breach and document evidence of abuse, including stalking. Sometimes the defendant uses other people to stalk the victim survivor or to create an experience of threatening behaviour or abuse, and they can get away with it, if the intervention order is limited to the defendant only. Victim survivors often say that an intervention order "sounds good, but it doesn't really scare the guy." And there's many stories about defendants getting away with breaches of the order or other forms of abusive behaviour. The defendant might be worried about it

¹³⁹ Service Provider interviewee A11.

¹⁴⁰ Service Provider interviewee A4.

¹⁴¹ Service Provider interviewee A4.

¹⁴² Service Provider interviewee A4.

¹⁴³ Service Provider interviewee A4.

if the intervention order includes requirements that impact on their work, they can also manipulate the intervention order.

It should be noted that non-physical forms of abuse can be harder to prove than physical forms of abuse. And the police can respond in different ways, depending on if the abuse is physical or not. The [Family Violence Investigation Section] can provide an important source of information and support for victims survivors. But it's not always possible for victim survivors to get access to that unit, particularly at the first response stage. Some police officers have a different view on what constitutes abuse.¹⁴⁴

The varied response to reports of family and domestic violence in circumstances where the alleged abuse is non-physical was a particularly strong theme. As one of the service provider focus groups explained

The Police have a policy of not assisting client/victims to obtain an Intervention Order at all unless there is evidence of physical abuse. This is despite the fact that the legislation defines abuse in broad terms. The Police guidelines or standing orders or policy is that take a narrow view of what types of abuse warrant the issue of an Intervention Order – and it generally has to be evidence of physical abuse. The Police don't act even in cases of extreme threats to life. The don't act unless they law a substantive change *and* the protected person is willing to support the application with a statement. As the Intervention Orders Act expands, the South Australian Police need to adjust their policies and guidelines.¹⁴⁵

A Service Provider interviewee who works in a regional area shared this view and highlighted the need for resources to support specialist police officers. The interviewee explained that:

There is no locally based the South Australian Police [Family Violence Investigation Section] in this [regional area]. Instead other suburban locations send out locum police officers. They are the ones that come [to the regional area] and some of them have been amazing, but because you don't know who you are going to get, I hesitate before recommending that women report something to police.

Often police will respond differently to “clear evidence” of physical violence, property violence and have a really different response to physical violence to non-physical violence. This can work against women. For example if a woman has been drinking and the perpetrator locks her out of her house at night with the children inside screaming – when she breaks a window to help her children, she is considered the ‘crazy one’.¹⁴⁶

Service Providers from Aboriginal controlled organisations also expressed concern about the quality of police responses for Aboriginal women seeking to access the Intervention Orders system:

When Aboriginal women seek support for family and domestic violence they don't get police support.

Sometimes the perpetrator of violence gets in first and seeks police assistance or gets an Intervention Order. This effectively isolates the woman and her children who are then unable to get police support and often find themselves in circumstances where they are subject to police intimidation. They become persons of interest or subject to child protection proceedings and sometimes are arrested or prosecuted.¹⁴⁷

The same group explained that:

¹⁴⁴ Service Provider interviewee A3.

¹⁴⁵ Service Provider interviewee A5.

¹⁴⁶ Service Provider interviewee A11.

¹⁴⁷ Service Provider interviewee A13.

Male perpetrators of violence know how to play it right. They can be calm before the police - speak in the right way the police and other authorities.

If an Intervention Order is put in place there is absolutely no effort to enforce breaches.

It's also impossible for people to understand whether someone is subject to an Intervention Order in the broader community.

Consideration should be given to using electronic bracelets for perpetrators who are subject to an Intervention Order in the same way that the bracelets are used for people who might be on bail or parole

There appears to be no effort by police to identify, report and prosecute breaches of Intervention Orders. The women involved bear the full burden of enforcement in a practical sense and are also required to produce evidence to substantiate any breach

“Police still have their man ego thing. Police look after men. How many times have women rang the police for protection and got nothing? Often the police would say ‘Ring me again when he hits you’!”

When an Intervention Order is made, it is always under the police authority and the police are in full control of when an Intervention Order is issued and when Intervention Order will end.

“Under the Intervention Orders order laws, police have the power to arrest perpetrators who are breaching the order, or move people on or move people out. But in practise this doesn't happen. The police just walk the perpetrator down the street and round the corner.”¹⁴⁸

When reflecting on the factors that contribute to these varied experiences, and how improvements could be made in the future, respondents to the Service Provider Survey strongly emphasised the need for (a) more training to officers in dealing and interacting with victims of family and domestic violence and (b) a closer alignment between the text legislation relating to Intervention Orders, which clearly refers to non-physical abuse as constituting grounds for an Order, and internal police policies relating to issuing Intervention Orders and prosecuting breaches. For example, one respondent said that:

There needs to be more training and a consistent response from [the South Australian Police]. I have had many clients who have reported a negative experience from an officer when they attempted to report and not been listened to or been brushed off before complete disclosure had occurred, which has been the reason they stopped reporting to police and the severity of the domestic violence increased.

This aligns with the views of a service provider focus group who said that:

People who interact with client/victims at the point of lodgement of applications for IO also need training to understand domestic violence and abuse. This is an important ‘first gate’ or ‘first interface’ between the court and the client/victim. It is important that these court officers/registry staff have the skills to respond effectively and to refer client/victims to appropriate services including WLS and Indigo.

The Victorian model could be useful – there the courts regularly make referrals and even appointments for people to access support services and legal services.¹⁴⁹

There is a need for some kind of in-court service to be available to those applying for Intervention Orders directly with the court. Sometimes people are referred to the Legal Services Commissioner’s Duty Solicitor for help, but this type of support for Intervention Order applicants go beyond the

¹⁴⁸ Service Provider interviewee A13.

¹⁴⁹ Service Provider interviewee A5.

scope of the Duty Solicitor's role (which prioritises people in custody) and beyond their file load. They are not well equipped to help victims of domestic violence and/or Intervention Order applicants. There needs to be a specialist service, that can refer people to places like Indigo. Improved public information about the Intervention Order process would also help. Often applicants expect to get the IO immediately at the time they file their application at the court, they don't realise there is a court process.¹⁵⁰

Other respondents pointed to the need for police and courts to be better resourced and carefully trained to respond to the specific needs of the applicant or victim survivor. For example, some respondents said that:

If there is a CALD victim, officers are very reluctant to use interpreters (for which they have funding) and instead will use relatives such as children whom are under 18 or relatives that are sided with the perpetrator. Rarely are the victims spoken to directly by the officer with an impartial third party interpreter and often they do not have a chance to speak for themselves.

[Short term] More money and staff for [South Australian Police Family Violence Investigation Section] please. [Long term] One only has to look at the court lists to see the enormous impost of family violence on our criminal justice system. This in turn leads to pressure on the child protection system, to children going into state care, then into the juvenile justice system and so the cycle goes. Even leaving aside an (essential) trauma informed approach, it just makes plain economic sense to intervene and act to prevent FV, rather than deal with the consequences.

When asked if any of the following changes would help improve interactions with between applicants, service providers and police officers, court officials or other public officials in the Intervention Orders system, respondents to the Service Provider Survey indicated as follows:

- Specific training to improve understanding of complex causes and experiences relating to domestic or family violence (19, 86.4%),
- More time or resources to enable more meaningful interactions (17, 77.3%),
- Improved understanding of your role and experience in the Intervention Orders system (12, 54.5%),
- Improved understanding of your client's role and experience in the Intervention Orders system (13, 59.1%),
- Other (1, 4.5%)

This aligns with the feedback received from one of the service provider focus groups which explained that

Where the police take time and effort to support client/victims to prepare good quality statements and collect relevant evidence, the results improve. This can include ensuring CALD women have access to interpreters, or taking time to record statements in a supportive environment eg over a couple of days. [The South Australian Police] should also consider employing some lawyers to help them understand the newer provisions in the Act.¹⁵¹

Other suggestions for improvements in police and court response to those seeking to access the Intervention Order system included:

- Improving resources for victims to give evidence in court, including access to companions/support persons while giving evidence.
- Removing the requirement for applicants to give oral evidence in support of private Intervention Order applications if the victim is represented or has a detailed affidavit.

¹⁵⁰ Service Provider interviewee A5.

¹⁵¹ Service Provider interviewee A5.

- Providing police with more discretion to apply for an Intervention Order on a protected person's behalf.
- Providing more resources devoted to the South Australian Police to investigate domestic violence reports and more resources to courts.
- Ensuring prosecutors are more responsive to applicants and their representatives.
- Increased referrals to social workers and counsellors for all parties involved once an order is made.

A Service Provider interviewee who works in a regional area highlighted the need for resources to support specialist police officers. The interviewee explained that:

Resourcing in regional areas is a big thing. Having Indigo outreach has been amazing, apart from COVID [an Indigo Officer] would have come every six weeks. That is great. Just someone who understands the law and the DV and the police.

And having some more senior FVU police officers here to help correct the behaviours happening in the senior ranks of the regional police force would be great too, supporting the younger ones who have had the training.¹⁵²

This aligns with the views of many lived experience interviewees who placed a strong priority on police training and resources as a top priority for reform. As one interviewee said:

I think police having proper training about in relation to domestic violence issues. I know that they've got family violence sections, but I think they've probably pretty under resourced.

I think that's probably the main issue. I think they probably just don't have the resources, even if they think that there's merit in it, to take on all the applications for intervention orders. I really just think it's a matter of training them in relation to domestic violence awareness.¹⁵³

Another interviewee explained:

More training for police and more understanding of domestic violence and mental health and narcissism. D can present so charming to people, they see me all natural, like this, and they hear him say "she's crazy", and they go "yep, we're out of here." Police have no idea. They need to be trained. Why send police to respond to domestic violence when they don't know what to do?

Every time they walk away it makes it worse. Because they make him feel like he is untouchable. And the police confirm that for him.¹⁵⁴

¹⁵² Service Provider interviewee A11.

¹⁵³ Lived Experience interviewee LE2.

¹⁵⁴ Lived Experience interviewee LE1.

11. What are the elements of a best practice justice system response?

As noted above, past efforts to improve the effectiveness of legal interventions to address domestic and family violence in South Australia have focused on a relatively narrow set of data produced and published by the courts.¹⁵⁵ However, this data generally fails to identify the legal, social, cultural and other barriers to the effectiveness of this legal framework in South Australia.¹⁵⁶ In contrast, the *Powerful Interventions* Project adopted a socio-legal approach¹⁵⁷ underpinned by principles of integrated knowledge translation,¹⁵⁸ which elicits the lived experiences of those who have sought to access the Intervention Order system to protect themselves or their dependents from the harm caused by family or domestic violence.

Seeking the ‘lived experience voice’ has the potential to give a deeper, more nuanced understanding of how these legal tools work in practice.¹⁵⁹ This aligns with feminist epistemology, which centres the voices of women with lived experiences as ‘knowers’.¹⁶⁰ The *Powerful Interventions* Project also employed a methodology of relational empowerment,¹⁶¹ which includes giving attention to emotional content and encourages relationship building between researcher and participants,¹⁶² with a view to enabling empowerment through honouring participants as holders of knowledge.¹⁶³

This approach enables this research to transcend the conventional ‘legal frame’ that so often accompanies an examination of a specific legislative framework and consider social-science approaches to both articulating the problem of domestic and family violence,¹⁶⁴ and to identifying potential changes to the Intervention Orders system that may help address this problem. In particular, the socio-legal approach adopted in the *Powerful Interventions* Project helps to identify the full range of benefits and limitations of legislative responses to domestic and family violence, and to recognise that: ‘domestic violence frequently manifests as a systematic process of controlling behaviours aimed at disempowering the victim, with physical violence being just one of the tools mobilised by the perpetrator to achieve this’.¹⁶⁵

This approach also recognises that these considerations have ‘yet to fully permeate legal understandings of domestic violence’, which continue to:

create and sustain a ‘hierarchy of harm’, whereby physical violence still dominates in the assessment of both the existence and severity of domestic violence, even in light of broader recognitions that many abusive behaviours do not include physical contact. ... This then

¹⁵⁵ See, eg, Office of Crime Statistics and Research, *Family Safety Framework* (Final Evaluation Report, November 2008) <https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0012/5142/FSF-Evaluation-Final-Report.pdf>.

¹⁵⁶ Such as those barriers identified by authors cited in above in note in footnotes 18, 20 and 21.

¹⁵⁷ Naomi Creutzfeldt, Marc Mason and Kirstin McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 2021).

¹⁵⁸ Doane et al, above.

¹⁵⁹ This is similar to the approach adopted in the studies cited in above in footnotes 18, 20 and 21.

¹⁶⁰ Sharlene Nagy Hesse-Biber, ‘Feminist Research: Exploring the Interconnections of Epistemology, Methodology, and Method’ in Sharlene Nagy Hesse-Biber (ed), *Handbook of Feminist Research: Theory and Practice* (Sage Publications, 2nd ed, 2012) 2.

¹⁶¹ Patti Lather, ‘Feminist Perspectives on Empowering Research Methodologies’ (1988) 11(6) *Women's Studies International Forum* 569, 569–81.

¹⁶² Stephanie L Martin et al, “‘I’ve Been Silenced for so Long’: Relational Engagement and Empowerment in a Digital Storytelling Project with Young Women Exposed to Dating Violence’ (2019) 18 *International Journal of Qualitative Methods* 1609406919825932.]

¹⁶³ Madine VanderPlaat, ‘Locating the Feminist Scholar: Relational Empowerment and Social Activism’ (1999) 9(6) *Qualitative Health Research* 773, 773–85.

¹⁶⁴ Kristin Anderson, ‘Gendering Coercive Control’ (2009) 15(12) *Violence Against Women* 1444, 1444–57; Mary Ann Dutton and Lisa A Goodman, ‘Coercion in Intimate Partner Violence: Toward a New Conceptualization’ (2005) 52(11–12) *Sex Roles* 743, 743–4; Cheryl Hanna, ‘The Paradox of Progress: Translating Evan Stark’s Coercive Control into Legal Doctrine for Abused Women’ (2009) 15(2) *Violence Against Women* 1458, 1458–76.

¹⁶⁵ Charlotte Bishop, ‘Domestic Violence: The Limitations of a Legal Response’ in Sarah Hilder and Vanessa Bettinson (eds), *Domestic Violence*, (Palgrave Macmillan, 2016) 59, 60–1.

leads to a legal response inherently limited in its ability to comprehend and provide redress for all victims of domestic violence. As a result, some victims and certain aspects of victims' experiences continue to fall outside of the law's protection.¹⁶⁶

To do this, the *Powerful Interventions Project* used a mixed methods design¹⁶⁷ that sought to analyse the existing court and police data relating to the use and enforcement of Intervention Orders in South Australia as well as undertaking ethics-approved surveys and interviews with South Australian participants with lived experience of the Intervention Orders system.¹⁶⁸ The qualitative research component targeted two participant cohorts: those with lived experience of the Intervention Orders system (including applicants, protected persons, defendants and witnesses) and those who provide services or support for those engaging with the Intervention Orders system (including legal professionals, social workers and/or public officials).¹⁶⁹ Most research participants with lived experience were female victim survivors, but their experiences were varied and not all related to intimate partner violence. A court official and retired police officer also formed part of the service provider cohort. The project reflected on publicly available materials shared by the South Australian Police, however, no currently serving police officers were interviewed, which is a key limitation in terms of the research, and one that must be kept in mind when considering the key findings and recommendations discussed below.¹⁷⁰

When taken together, the findings of the *Powerful Interventions Project* reveal a legal system under acute pressure, that is failing to meet the needs of those it is designed to protect. The research participants made it clear that, despite the genuine individual efforts by police officers, lawyers, social workers and others in the system, there remain structural problems and cultural deficits evident within both the legal framework governing Intervention Orders and the practical implementation of these legal tools. Some of the key findings of the *Powerful Interventions Project* are considered below.

- Critical need to see Intervention Orders within broader legal context

A number of research participants in the *Powerful Interventions Project* drew attention to the fact that the Intervention Orders system overlaps with the Child Protection System and the Family Law System in complex ways.¹⁷¹ This can reduce the effectiveness of the Intervention Orders system as a tool for addressing domestic and family violence and can prevent people from seeking an Intervention Order. In particular, there is a need to undertake additional research into the State/Federal complexities associated with Intervention Orders, particularly in the context of Family Law orders and related Family Law proceedings. This includes further consideration of the Family Dispute Resolution process under Part 7 of the *Family Law (Dispute Resolution Practitioners) Regulations 2008* (Cth) and the extent to which this process interacts with the Intervention Orders system. During the *Powerful Interventions Project*, many participants also expressed the view that experienced and professional mediation practices could play a central role in helping parties understand their options with respect to the intersection of FCFCA Orders and the Intervention

¹⁶⁶ Ibid.

¹⁶⁷ Catherine Marshall and Gretchen Rossman, *Designing Qualitative Research* (Sage, 4th ed, 2016); Janice M Morse, 'Approaches to Qualitative-Quantitative Methodological Triangulation' (1991) 40(20 *Nursing Research* 120, 120–3; Bruce L Berg, *Qualitative Research Methods for the Social Sciences* (Allyn & Bacon, 6th ed, 2007).

¹⁶⁸ Moulds and Yohanesh (n 1) 61.

¹⁶⁹ Sixty-three survey responses were received, 48 from service providers and 15 from people with lived experience. Nineteen individual interviews were conducted (nine with persons with lived experience and 10 with service providers) along with four focus groups. Despite this, it remained difficult to reach participants in regional and remote locations and people from Aboriginal and CALD backgrounds.

¹⁷⁰ Moulds and Yohanesh (n 1) 32. One of the recommendations contained within this Report was to undertake further research in partnership with the South Australian Police.

¹⁷¹ Ibid 152.

Order system and provide a pathway for parties who want to reconcile and repair relationships to do so safely.¹⁷² As one Lived Experience interviewee explained:

The individuals involved in a family relationship breakdown or other domestic related dispute could be represented by people who know them well, or by legal representatives who could participate in a collaborative conversation. This could include representatives from different service providers and other professionals working within the sector, such as representation from child protection, from the schooling system, expert and general health practitioners, social workers and psychologists. They could work as a collective to develop a solution and to talk about different, effective ways to communicate with the parties.¹⁷³

- Accessing high quality, tailored legal information early can define the experience for applicants, and ensure that legislative provisions are given full effect

Many research participants in the *Powerful Interventions Project* acknowledged that a range of high-quality specialist services — engaging a broad range of professionals with expertise and experience in trauma informed care, legal advice, health care, mediation services and social services — are available to people experiencing domestic and family violence in South Australia.¹⁷⁴ However, not all victim survivors are aware of or able to access this support and many experience domestic and family violence for years before connecting with or being referred to specialist services.¹⁷⁵ In addition, not all information accurately explains the realities of the process of applying for an Intervention Order, and the consequences for the protected persons if an Intervention Order is issued and potentially breached.¹⁷⁶

It was also noted that many people only learn about the Intervention Orders system in the context of experiencing trauma, violence or abuse which can limit their ability to absorb and understand key information.¹⁷⁷ Often Intervention Orders are discussed or considered in the context of other legal proceedings, including child protection proceedings, FCFCA proceedings or criminal law proceedings, leading to potential confusion about how the different systems intersect.¹⁷⁸ First responders (including police, lawyers, health care providers, and other service providers) vary in the quality of support and information they provide to victim survivors and in their understanding of domestic and family violence and the Intervention Orders system. Research participants in the *Powerful Interventions Project* explained that not all first responders are displaying evidence of clearly understanding the existing Intervention Orders laws or the complex causes and consequences of domestic and family violence.¹⁷⁹

- Police play the central role in legal response to domestic and family violence and their response to incidents or reports of violence often defines people’s experiences of the justice system

Many research participants noted with respect the important and often extremely challenging role police officers play in the system and the South Australian response to domestic and family violence.¹⁸⁰ There was an acknowledgement of the many individuals within the system who are working tirelessly to protection women, children and others from harm often in the context of

¹⁷² Ibid.

¹⁷³ Ibid 138.

¹⁷⁴ Ibid 152.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid 153.

¹⁸⁰ Ibid 153–4.

limited resources and threats to personal safety.¹⁸¹ However, an overwhelming number of research participants described substandard police responses to domestic and family violence and a lack of understanding of the Intervention Order laws and of domestic and family violence by police officers.¹⁸² Some of these accounts were particularly traumatising. For example, one research participant said:

I didn't feel like I was taken seriously or believed. [I was] made to feel like I was being judged as hysterical, ridiculous and time wasting. This made me feel unsafe to approach police again which was fairly scary, because they were the place I was supposed to be able to count on to help, and I wasn't sure where else I could go.¹⁸³

However, other research participants expressed the view that some police officers (particularly those within the Domestic and Family Violence Unit) provide high quality responses and treat applicants and protected persons with respect and care.¹⁸⁴

The collection and presentation of evidence to support Intervention Order applications can be problematic particularly for victim survivors who have or are still experiencing trauma, are not represented by specialist legal practitioners and/or when the domestic and family violence is non-physical.¹⁸⁵ The domestic and family violence specialist courts can provide a positive experience for victim survivors, particularly when it comes to providing evidence and understanding the process. These courts tend to utilise the full range of provisions contained in the Intervention Orders that are designed to facilitate hearings that respect and support the rights and interests of protected persons.¹⁸⁶ However, some research participants said that not all magistrates demonstrate an awareness or willingness to utilise these provisions in related matters.¹⁸⁷

Complex family and community relationships within Aboriginal and CALD communities can influence the extent to which individual experiences domestic and family violence are able to access support services, report abuse to police and apply for Intervention Orders.¹⁸⁸ Some individuals may have had negative experiences with child protection authorities and/or with police or may face isolation from their communities if they seek to engage with the Intervention Orders system. However, when specialist, culturally appropriate support is provided, individuals within these communities have been able to speak out against domestic and family violence and access legal protections for themselves and their children.¹⁸⁹

- Existing legal tests are appropriate, but applicants have diverse experiences when applying for police issued versus court issued Intervention Orders

One of the most interesting findings of the *Powerful Interventions* Project was that almost all research participants expressed the view that the current legal test for granting an Intervention Order was appropriate and not in need of significant legislative reform.¹⁹⁰ For example, some research participants explained that the pathways for accessing interim Intervention Orders are very different and give rise to different experiences for victim survivors and protected persons.¹⁹¹ Police-issued Intervention Orders can lead to a lack of control for the victim survivor and can demand a

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid 9.

¹⁸⁴ Ibid 153–4.

¹⁸⁵ Ibid.

¹⁸⁶ See *Intervention Orders Act* ss 28–9.

¹⁸⁷ *Moulds and Yohanesh* (n 1) 153–4.

¹⁸⁸ Ibid 154.

¹⁸⁹ Ibid 153.

¹⁹⁰ Ibid 154.

¹⁹¹ Ibid.

higher threshold of evidence of abuse or violence. Research participants said that when applicants sought Intervention Orders directly from the court, they were able to exercise more control over the process, which can lead to a positive experience, provided high quality, specialist legal advice can be accessed.¹⁹² Although filing fees have now been waived, cost issues may still arise when applicants require private legal representation in circumstances where specialist legal services are limited.

There is another interesting finding related to the rate of withdrawals of Intervention Orders by applicants following initial interactions with police or courts.¹⁹³ As noted in Part II, past studies have suggested that withdrawals of Intervention Order applications can be a sign of protected persons experiencing difficulties collecting and presenting evidence. This view was endorsed by some research participants.¹⁹⁴ However, others also noted that the withdrawal of Intervention Order applications can be a sign of success.¹⁹⁵ These participants explained that withdrawing an application for an Intervention Order may mean that the victim survivor or protected person has found another way to achieve safety, such as a family law settlement, alternative housing or independent income.¹⁹⁶

Research participants also pointed to underlying issues surrounding the role of Intervention Orders in the context of family or relationship breakdowns. For example, it was noted that the ability of the parties to an Intervention Order to negotiate or develop meaningful, targeted conditions can vary greatly with flow-on implications for compliance and utility of the order.¹⁹⁷ Often what the applicant is looking for is immediate protection from harm, but as the immediate threat subsides, there can be a need to reconsider the nature of the conditions imposed and the impact they may have on repairing family relationships.¹⁹⁸ As explained in Part I, the current legal settings in South Australia can result in the issue of final Intervention Orders with ‘ever-lasting’ duration, which does not easily facilitate this type of longer-term negotiation and rebuilding of relationships between parties to the order, and their families.

- Existing maximum penalties for breaches are appropriate but responses to reports of breaches and rehabilitation packages are not meeting the needs of protected persons

The *Powerful Interventions* Project revealed that there is a general lack of awareness among many key stakeholders in the system as to the current maximum penalties for breaching an Intervention Order in South Australia.¹⁹⁹ There is also a lack of evidence that maximum penalties are being/have been imposed by courts or sought by the Director of Public Prosecutions.²⁰⁰ In addition, very few research participants called for an increase in custodial or other penalties for breach of Intervention Orders. However, many research participants indicated that current approaches to enforcing Intervention Orders and promoting compliance with Intervention Orders are ineffective. For example, some research participants explained that there appears to be an ‘unwritten policy’ being applied by some police when it comes to breaches of Intervention Orders, where instances of non-

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid 155.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

physical violence abuse are not considered as violence and perpetrators are given warnings for ‘minor’ breaches instead of being referred to court.²⁰¹

Many research participants in the *Powerful Interventions* Project also highlighted the need to ensure the court retains discretion to tailor penalties and consequences to meet the needs of protected persons, prioritising short term and long term safety of protected persons.²⁰² A number of research participants also expressed the view that existing behavioural change programs and other perpetrator intervention programs require regular, independent evaluation to determine their effectiveness at meeting the needs of participants, having regard to best practice.²⁰³

Summary of key recommendations

The *Powerful Interventions Project* recommended that policy makers, legislators, service providers and community sector organisations should:

1. Improve community awareness and understanding of the complex causes and serious impacts of domestic and family violence within the community, and the role Intervention Orders can play in responding to domestic and family violence.²⁰⁴ This includes taking steps to:
 - a. criminalise coercive control and clarify that Intervention Orders can be issued in response to experiences of coercive control;²⁰⁵
 - b. publicly acknowledge and celebrate the work of dedicated police officers, court officials and other service providers that has saved lives and promoted the rights of women, children and others experiencing domestic and family violence;
 - c. identify champions and leaders from all walks of life who can develop and disseminate tailored public awareness campaigns that recognise that domestic and family violence is gendered, and that non-physical violence and abuse can be equally, and often more, harmful than physical violence;
 - d. amend the *Intervention Orders Act* to make it clear that it is everyone’s responsibility to prevent and respond to domestic and family violence, not just victim survivors;²⁰⁶ and
 - e. empower victim survivors to recover and rebuild, for example, by allocating additional funding to existing specialist service providers to establish and maintain support groups for individuals with lived experience of domestic and family violence that could also be used as a source of information for others about where to go to get help.²⁰⁷

²⁰¹ Ibid 153.

²⁰² Ibid 153–4.

²⁰³ Ibid 153.

²⁰⁴ Ibid.

²⁰⁵ Ibid 24. It is noted that there are currently proposals before the South Australian Parliament relating to this reform: see Criminal Law Consolidation (Coercive Control) Amendment Bill 2020 (SA) (‘Coercive Control Amendment Bill’) and a draft Abusive Behaviour Amendment Bill. See also *yourSAy*, above n 107.

²⁰⁶ This could take the form of a legal duty to report family and domestic violence to police in certain circumstances, such as that contained in *Domestic and Family Violence Act 2007* (NT)

²⁰⁷ It is noted that during the 2022–23 Federal Budget, the Morrison government allocated \$52.4 million over 4 years to Legal Aid Commissions to meet expected demand for support under the Family Violence and Cross Examination of Parties Scheme, and \$7 million over 2 years for nine Women’s and Community Legal Services nationally to help women access legal assistance and migration support.

2. Improve the quality and consistency of ‘first responses’ to incidents or reports of domestic and family violence and requests for Intervention Orders — including by mandating trauma-informed, domestic and family violence sensitive training for police, lawyers, court officials and other service providers.²⁰⁸ This could also include facilitating the co-design and evaluation of a pilot program that would provide holistic, trauma-informed services to potential/existing Intervention Order applicants, protected persons and defendants in a health care setting at the time of first report of domestic and family violence and/or at the time of breach.²⁰⁹
3. Clearly identify and streamline the different pathways for obtaining an Intervention Order and empower and support applicants to exercise control over the conditions of the Intervention Order, the process of collating and presenting evidence, and the service and duration of Intervention Orders and the process of variation.²¹⁰ This could include amending the *Intervention Orders Act* to:
 - a. ensure that victims accounts of violence and abuse, and the risks they face, are considered carefully and taken seriously by police and courts, having regard to the impact of trauma;²¹¹
 - b. enable police to issue Family Safety Notices in response to domestic and family violence incidents to provide temporary protection for victims and those at risk of harm, but permit longer term conditions of orders to be negotiated at a later date;²¹²
 - c. enable the court to indicate that a specific condition in a family violence order may have effect for a period shorter than the period of the rest of the order; and²¹³
 - d. undertake an audit of existing Intervention Orders to ensure that victim-survivors have been informed about any variations that might have been made without their knowledge and consent, and provide any relevant victim-survivors with the opportunity to contest the varied terms of the Order.
4. Proactively promote compliance with Intervention Orders by:
 - a. improving the quality and consistency of police responses to reports of breaches through mandated specialist training referred to above;
 - b. requiring the magistrate (or the victim if they elect) to read out the Victim Impact Statements in all proceedings relating to breaches of Intervention Orders, to hear the impact of the violence or the abuse on the victim and/or any other protected persons;
 - c. amending the *Intervention Orders Act* to clarify that when imposing a penalty for breach of an Intervention Order, the court has the discretion to design a rehabilitation package that would include qualitative reports from behaviour change program providers about the nature of the defendant’s participation in those programs, as well as attendance; and

²⁰⁸ Moulds and Yohanesh (n 1) 159.

²⁰⁹ It is noted that during the 2022-23 Federal Budget, the Morrison government allocated \$25 million for the Australia-first domestic violence trauma recovery centre in New South Wales. See also Ainslie Drewitt-Smith and Melinda James, ‘Federal Budget Gives \$25 Million for Australia-First Domestic Violence Trauma Recovery Centre in NSW’, *ABC News* (online, 30 March 2022) <<https://www.abc.net.au/news/2022-03-30/federal-budget-funds-illawarra-womens-health-centre-trauma-help/100950352>>.

²¹⁰ Moulds and Yohanesh (n 1) 160–1.

²¹¹ *Family Violence Act 2016* s 34(2).

²¹² *Family Violence Protection Act 2008*.

²¹³ *Family Violence Act 2016* s 42.

- d. undertaking an independent evaluation of the effectiveness of existing behavioural change programs and other perpetrator intervention programs and make this information available to prosecutors and magistrates.²¹⁴

13. Acknowledging that every victim-survivor will have different needs depending on their personal circumstances, are there universal needs that will arise for all victim-survivors?

Central to the top priority reforms articulated by lived experience participants in the *Powerful Interventions* Project were the concepts of accountability and justice and putting the victim survivor at the centre of the system. As one interviewee explained:

Put the victim front and centre. The Canadian experience can be instructive. We need expert [domestic violence] courts, with expert, trained judges with experience providing continuity of engagement with victims and perpetrators. Expert prosecutors that can lead [domestic violence] informed prosecutions. We also need to utilise First Nations courts where people can be held accountable to their communities. We need to prioritise and privilege the voices of victims and protect their safety and wellbeing. It is possible to do this. We must not think this is impossible.²¹⁵

Another interviewee said:

At the heart of the issue is why isn't the man being held accountable? They wouldn't need so much money spent to domestic violence if the man was held to account.

Put the men in the safe room, put them under surveillance, with no freedom. How would they cope?

It's what happens behind closed doors. That's where the control is.

...

I have been isolated by from family, I have suffered reputational damage. How can I start a new life? No one has made him be accountable for this actions.

I don't want a settlement. I want justice.²¹⁶

This demand for accountability was also reflected in the responses from the Service Provider Survey. For example, one respondent said:

Accountability of some description but am not sure what capacity there is for this or whom would police it.²¹⁷

This sentiment is also evident within the feedback provided by Service Provider interviewees, one of whom said that:

There needs to be more transparency and accountability for police in the general police force, not just the family and domestic violence unit. It's not acceptable for a police officer, not to understand what's going on for a woman. Understanding about abuse, including the causes and pattern of behaviour of low level abuse and culminating in a manipulative situation, where the police believes the defendant rather than the victim, needs to be improved.

Often there's an assumption being made about the victim and the defendant. It might be that the defendant is physically small and therefore couldn't perpetrate the violence or that the defendant is articulate and so must be the good guy or that the victim survivor is distressed and therefore is crazy

²¹⁴ Moulds and Yohanesh (n 1) 162–3.

²¹⁵ Service Provider interviewee A9.

²¹⁶ Lived Experience interviewee LE1.

²¹⁷ REDCAP Service Provider Survey respondent.

or irrational. There's a problem of police lacking an understanding or knowledge of what happens around power and control and what that looks like on the ground. There's a need to look beyond what presents at face value – to go back to the evidence of past reports and really understand what's happening for that victim survivor.

Over a period of time the number of women who hear about defendants getting away with ongoing abuse, even though an intervention order has been taken out, puts them off reporting and engaging with the system. Every time a woman faces a police officer that doesn't believe her, or doesn't think the abuse is serious enough, the defendant becomes untouchable and able to perpetuate more violence.²¹⁸

An Aboriginal controlled organisation also stressed the link between education, information, empowerment and accountability, explaining that:

Education is critical. Everyone presumes that everyone knows the law and has the support. There is a lot of support in the community but not many people know about it. You could use the Grannies Group to facilitate direct involvement by Aboriginal people within the [Family Violence Investigation Section] of the police. But you've got to remember that the whitefellas legal system is set in concrete. The Port Adelaide Magistrates Court has different forms of accessible support, but this is less so in the city courts. Often these systems are not really trying to support Aboriginal women.

When Aboriginal women attempt to use the legal system to protect themselves or their families, they have to question police about everything, and they have to work hard to create relationships of trust between themselves and the police. This is really important to work together with the police to change attitudes, but it takes work from both sides, and there are not a lot of police or prosecutors who have shown a willingness to change their ideas. Many of them still think it is Aboriginal people that are causing all of the crime. That they are the thieves, or involved in domestic violence, abusing alcohol and that they need to be addressed through the prison system.²¹⁹

Another interviewee from a CALD background – referred to as ML – highlighted the need for the broader community to understand and take responsibility for holding perpetrators to account for their abuse and violence. In ML's experience, the unequal gender roles within her community added to her experiences of isolation and impeded her ability to seek protection against abuse and violence.

You have to have a man to be there for you. And if you don't have a male figure in everything that you do, you are not respected and you have no status in the community. And if you attempt to leave your husband you are ridiculed and humiliated and considered available for sexual intercourse or other sexual activities by other men.²²⁰

ML considers that it should be possible for the police or the courts to go out to the community where the perpetrator is based and explain what an Intervention Order means for that community, not just the individual. This should include an explanation of the rights of the woman protected by the Order, and the restrictions on the man's conduct. This should be explained to the head of the community, then this could assist in the community understanding Intervention Orders.²²¹

²¹⁸ Service Provider interviewee A3.

²¹⁹ Service Provider interviewee A13.

²²⁰ Lived Experience interviewee LE5.

²²¹

Appendix A: Overview of the Legal Framework relating to Intervention Orders in South Australia

Intervention Orders, also described as Domestic Violence Orders or Apprehended Violence Orders, are legal orders issued by the police or the courts to prohibit or prevent a person (the defendant) from contacting, abusing, harming or threatening another person (the protected person). The Legal Service Commission of South Australia describes intervention orders as follows:

An intervention order is a court order against a person who makes you fear for your safety. The person you fear (known as the defendant) must obey the order made by the court. An intervention order prevents the defendant from assaulting, harassing, threatening, stalking, or intimidating you. An order can be made against anyone you fear including a spouse, relative, neighbour or someone with whom you have had an intimate relationship with. If you fear for your children's safety, you can include them in your application.²²²

In South Australia, 'Intervention Orders' are governed by the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) (the Intervention Orders Act).²²³ These orders can be obtained by approaching the police and seeking that an interim order be made (police issued intervention orders), or a person can apply directly to the Magistrate's Court without going to the police (sometimes called 'private' intervention orders).²²⁴

This Project focuses predominantly on police issued Intervention Orders, however there are a range of other legal orders that can be issued or enforced in South Australia. For example, under the *Family Law Act 1975* (Cth), legal orders restraining, prohibiting or preventing a person from contacting, abusing, harming or threatening another person can be issued.²²⁵ New criminally enforceable federal family violence orders have also been proposed²²⁶ that would allow for the Federal Circuit and Family Court of Australia to make a federal family violence order where the Court is satisfied that family and domestic violence has already taken place or there are reasonable grounds to suspect that it is likely that family and domestic violence will take place, or that a child may be exposed to family and domestic violence.²²⁷

In addition, since November 2021 domestic violence orders issued in other Australian States and Territories have also been recognised and enforced in South Australia as part of the National Recognition of Domestic Violence Order Scheme.²²⁸

²²² See Legal Services Commission Website 'COVID-19 Intervention Orders' available at <<https://lsc.sa.gov.au/resources/COVID%2019%20Intervention%20Orders%20Final.pdf>> (accessed 3 May 2022)

²²³ On 8 December 2011 the *Domestic Violence Act 1994* (SA) was repealed and partially replaced by the *Intervention Orders (Prevention of Abuse Act 2009* (SA).

²²⁴ South Australian Magistrate's Court Form 28AA - Private Application, Form 45 - Affidavit.

²²⁵ *Family Law Act 1975* (Cth) s68R.

²²⁶ Family Law Amendment (Federal Family Violence Orders) Bill 2021 (Cth).

²²⁷ The court would also be required to take into account other matters in making an order, including as the primary consideration, the safety and welfare of the child or protected person, as well as any additional considerations the court considers relevant, such as the criminal history of the person against whom the order is directed. The order may provide for the personal protection of a child or a person related to a child, such as their parent or a person who has parental responsibility for the child, or a party to a marriage.

²²⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) Part 3A—National recognition of domestic violence order; see also 'National Domestic Violence Order Scheme', Attorney-General's Department's website, available at <<https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme#:~:text=National%20Domestic%20Violence%20Order%20Scheme%20All%20Domestic%20Violence,aims%20to%20better%20protect%20victims%20and%20their%20families.>> (accessed 5 May 2022).

State child protection orders can also be made by the South Australian Youth Court under the *Children and Young People (Safety) Act 2017* (SA),²²⁹ under the *Criminal Procedure Act 1921* (SA)²³⁰ the Youth Court can make an order restraining a non-guardian adult who has been living with a child from living with or having any contact with the child. Intervention Orders can also co-exist with or interact with conditions of bail imposed under section 23A of the *Bail Act 1985* (SA).²³¹

These orders, and their interactions with the South Australian Intervention Order system are discussed in further detail below.

Overview of Existing South Australian Laws

The primary object of the Intervention Orders Act is to ‘assist in preventing domestic and non-domestic abuse, and the exposure of children to the effects of domestic and non-domestic abuse’, by setting out a legal framework for issuing and enforcing Intervention Orders and similar orders issued in other jurisdictions.²³² The Act has been amended multiple times since 2009, reflecting ongoing parliamentary efforts to improve its effectiveness as a tool to prevent and respond to family and domestic violence.

Under the Intervention Orders Act the term ‘abuse’ is broadly defined.²³³ It includes ‘physical, sexual, emotional, psychological or economic abuse’²³⁴ and encompasses those acts that result in (or are intended to result in):

physical injury; emotional or psychological harm; an unreasonable and non-consensual denial of financial, social or personal autonomy; or damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.²³⁵

The abuse will take on the character of ‘domestic abuse’ if it is committed by a defendant against a person with whom the defendant is or was formerly in a relationship, for example, if they are married to each other or in a domestic partnership or if the other person is a child or stepchild.²³⁶

Intervention Orders can be issued by the South Australian police (described as ‘interim Intervention Orders’) or by the South Australian Magistrates Court (described as ‘final Intervention Orders’). In some cases, the Court can also issue an interim intervention order.

The person who applies for an intervention order is called an ‘applicant’. The person who they want to be subject to the order is called the ‘defendant’. The applicant may also be a ‘protected person’ if they are seeking protection from the defendant.²³⁷ A protected person can also include a child who might be at risk of abuse, or at risk of witnessing abuse.²³⁸

Section 6 of the Intervention Orders Act provides that an intervention order 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

²²⁹ *Children and Young People (Safety) Act 2017* (SA) s53.

²³⁰ *Criminal Procedure Act 1921* (SA), s99AAC. Before granting such an order the Court must be satisfied that the child’s contact or residence with the adult puts him or her at risk of sexual, physical, psychological or emotional abuse or neglect.

²³¹ See *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s9.

²³² *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s5.

²³³ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s8.

²³⁴ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s8(1).

²³⁵ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s8(2).

²³⁶ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 8(8).

²³⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s7.

²³⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s7.

(b) the issuing of the order is appropriate in the circumstances.

These grounds need to be established on the balance of probabilities. That means that the decision maker will ask whether it is ‘more likely than not’ that the defendant will commit an act of abuse.²³⁹

In order to demonstrate that these grounds exist, the applicant and/or the person experiencing the abuse, harm or threats will generally have to provide a written statement (described as an affidavit) outlining a range of relevant circumstances including

- the background of the relationship between the defendant and the protected person/s or applicant;
- details of the defendant's recent behaviour of concern;
- details of any other incidents or threats which happened in the past;
- details of relevant existing or pending court orders;²⁴⁰
- any weapons the defendant has.²⁴¹

Evidence from a protected person can also be provided to the Magistrates’ Court via video recording.

Section 10 of the Intervention Orders Act sets out the principles that must be taken into account by the police or the court when deciding whether or not to issue an intervention order, and when setting out the terms of the order. These principles recognise that:

- abuse occurs in all areas of society, regardless of socio-economic status, health, age, culture, gender, sexuality, ability, ethnicity and religion;
- abuse may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of behaviour; and
- it is of primary importance to prevent abuse and to prevent children from being exposed to the effects of abuse.

A police officer can issue an interim Intervention Order against a defendant if

- appears that there are grounds for issuing the order (ie that it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person; and the issuing of the order is appropriate in the circumstances) and
- the defendant is present before the police officer or
- in custody.²⁴²

Once an interim Intervention Order is issued by a police officer, a number of things need to happen. For example, the police officer must

- serve a copy of the intervention on the defendant;
- identify the defendant and the persons protected by the order;
- specify the prohibitions and requirements imposed by the order; and
- require the defendant to appear before the Magistrates Court at a specified time and place (usually within 8 days after the date of the order being made).²⁴³

An interim Intervention Order can also be made by the Magistrates’ Court, following an application by the police or a person²⁴⁴ who is worried that the defendant might commit an act of abuse against them (or their representative), or a child who may hear, witness or otherwise be exposed to an act of abuse

²³⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s28.

²⁴⁰ For example any Family Law Act orders, agreements, plans, injunctions, undertakings; orders or agreements for division of property; child protection orders; any existing restraining order; any other legal proceedings between the parties.

²⁴¹ South Australian Magistrate’s Court Form 28AA - Affidavit.

²⁴² *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s18.

²⁴³ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s18(3)

²⁴⁴ The applicant may use the Application for Intervention Order (Form 28AA) or their representative and the police may use the Application for Intervention Order (Form 28).

by the defendant.²⁴⁵ If the child is over 14 years old, they can apply to the court for an interim Intervention Order themselves. Applications can be made on behalf of younger children by their parent or guardian, or by a person with whom the child normally lives or another representative that has been approved by the Court.²⁴⁶

An Intervention Order will set out a list of things that the defendant cannot do, or must do. These are described as the ‘terms’ of the order and are listed in section 12 of the Act. For example, the terms of the order can prohibit the defendant from

- being at the place at which a protected person resides or works;
- being in a specified place;
- approaching a protected person;
- contacting, harassing, threatening or intimidating a protected person or any other person at a place where the protected person resides or works;
- damaging specified property; or
- possessing specified personal property.

If the application for the Intervention Order proceeds to a hearing, the Magistrates Court can issue an interim Intervention Order against the defendant if the Magistrate considers that the grounds described above exist.²⁴⁷ The application can also be dismissed, for example, if it is found to be vexatious or without substance.²⁴⁸ The Court will also consider the nature of the abuse, and the relationships between the parties. If the abuse is non-domestic in character, the Court may take into account ‘whether it might be appropriate and practicable for the parties to attempt to resolve the matter through mediation or by some other means’.²⁴⁹ Special considerations apply if the applicant is a police officer.²⁵⁰

If the Magistrate decides to issue an interim Intervention Order, it will set out in the order the details of the defendant and the persons protected by the order as well as the prohibitions and requirements (terms) imposed by the Order.²⁵¹ The final Intervention Orders must also be served on the defendant. The defendant will also be required to appear before the Court at a specified time and place (usually within 8 days after the date of the order being made).²⁵²

Family mediation services may also be accessed at this stage²⁵³ and sometimes, the defendant will consent to a final Intervention Order being made. If this occurs, the interim Intervention Order will be finalised by the Magistrates’ Court through a process set out in section 23 of the Intervention Orders Act.

During the hearing for a final intervention order, the defendant is not able to ask questions directly of a person protected under the order and they cannot directly question a child who has allegedly been

²⁴⁵ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s20(2).

²⁴⁶ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s20(2).

²⁴⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21(3)(a).

²⁴⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21(3)(b).

²⁴⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21(4).

²⁵⁰ See *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21 (4a) which provides that “If the applicant is a police officer— (a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and (b) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.”

²⁵¹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21(7).

²⁵² *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s21(7).

²⁵³ See e.g Centacare Family Dispute Resolution Service that is available to eligible families in South Australia, Centre Care, ‘Family and Dispute Resolution Service’, available at <<https://www.centacare.org.au/service/family-dispute-resolution/>> (accessed 5 May 2022).

exposed to abuse committed by the defendant.²⁵⁴ If the defendant is not legally represented, the defendant must first give the Court a list of cross-examination questions they wish to have asked and the Court will decide which questions are allowable.²⁵⁵ The questions are then asked by the Court or someone the Court nominates.²⁵⁶

Under this process, the Court can confirm the interim order (e.g. can impose the same terms or prohibitions on the defendant) or make changes to the terms of the order or dismiss the application and revoke the interim order. Before confirming the Intervention Order, or issuing a substitute order, the Court will check whether there are any relevant Family Law Act orders or State child protection orders in place with respect to any children that might be connected to the order, the applicant, or the defendant.²⁵⁷ When making a final Intervention Order the Magistrates' Court can also impose a 'problem gambling order' if the defendant meets the relevant criteria set out in the *Problem Gambling Family Protection Orders Act 2004* (SA).²⁵⁸

The Intervention Orders Act also empowers the Magistrate's Court to make a 'tenancy order' which can require the defendant to leave his or her home in order to separate them from the protected person. A tenancy order makes it clear that if the defendant is a party to a tenancy agreement (for example renting a house) they can be stopped from entering the tenancy premises under an Intervention Order. If an Intervention Order in those terms is made, it has the legal effect of assigning the defendant's interest in the tenancy agreement to a specified person or persons with the landlord's consent.²⁵⁹ In other words, a defendant can be 'taken off the lease' of a home where a protected person lives if this is needed to give effect to the terms of an Intervention Order.

Once a final Intervention Order has been made by the Magistrates' Court, parties to the order (including the applicant and the defendant and any protected person including a child) or a police officer can apply to the court to vary the order, or to have the order revoked.²⁶⁰ If the defendant asks the Court to vary or revoke the order, the Court can dismiss the application without receiving submissions or hearing evidence if the application is frivolous or vexatious, or if there has been no substantial change in the relevant circumstances since the order was issued.²⁶¹ It should be noted that a defendant cannot bring an application to vary or revoke for 12 months after order is made. An applicant can bring the application at any time. If the Court decides to vary or revoke a final Intervention Order, the Court must tell the Commissioner of Police, the defendant and each person protected by the order and give them a reasonable opportunity to make submissions or be heard on the matter.²⁶² The Court must also notify other relevant public authorities.²⁶³

It is important to note that unlike other Australian jurisdictions, in South Australia final Intervention Orders have no end date: they continue to operate until they are varied or revoked by the Court. If circumstances change, the defendant or another party can apply to the Court to have a final Intervention

²⁵⁴ If evidence has gone before the Court by way of audio or audio visual record of the protected person, the protected person may still be further examined, cross-examined or re-examined, but only with the permission of the Court, *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 28A(2)(b).

²⁵⁵ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29(4).

²⁵⁶ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29(4).

²⁵⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s23.

²⁵⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s24.

²⁵⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s25.

²⁶⁰ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s26(1).

²⁶¹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s26(4).

²⁶² *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s26(5).

²⁶³ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s26(8)-(10).

Order revoked.²⁶⁴ If an applicant or a protected person wants to vary an Intervention Order or have the order revoked, they can ask the Court directly or request assistance from the police.

If the defendant does not follow the terms of the Intervention Order, for example if the defendant telephones a protected person or visits their place of work (described as a breach or contravention of the order), then criminal consequences can flow. Critically, the breach of the Intervention Order must be made known to the Magistrates' Court, usually by the police or correctional officers. This in turn requires a protected person or other witness to report the breach to the police, which may not always occur due to the factors discussed below.

If a police officer has reason to suspect that a person has not complied with the terms of an Intervention Order, the police officer can arrest and detain the person and does not need to get a warrant.²⁶⁵ A hearing will then occur before the Magistrates Court to determine whether the defendant has breached the terms of the Intervention Order. The hearing will be held in line with the provisions described above, with protections provided for the collection of evidence from and cross-examination of protected persons and other vulnerable witnesses. For example, if the defendant is not legally represented, the defendant must first give the Court a list of cross-examination questions they wish to have asked and the Court will decide which questions are allowable.²⁶⁶ The questions are then asked by the Court or someone the Court nominates.²⁶⁷

If the Magistrates' Court finds that the defendant has not complied with the terms of the order criminal penalties can apply. For example, a person who:

- fails to undertake an assessment for an intervention program or fails to comply with a term to attend an intervention program will be guilty of an offence punishable by a maximum penalty of \$1250.²⁶⁸
- contravenes any other term of an intervention order will be guilty of an offence punishable by a maximum of \$10 000 or imprisonment for 2 years.²⁶⁹

If the defendant breaches the order a second or subsequent time, and the breach involves physical violence or the threat of physical violence, the penalties imposed increase significantly to a maximum fine of \$20 000 or imprisonment for 4 years.²⁷⁰

If the defendant is found guilty of breaching an Intervention Order and the breach involved physical violence or a threat of physical violence, the Magistrates' Court is given the discretion to also require the convicted person to make a payment toward the cost of any intervention program the person is required to undertake in accordance with the Intervention Order or make any other order that the Court thinks fit.²⁷¹

²⁶⁴ Section 15 of the Intervention Orders Act also requires the Court, when issuing a final intervention order, to include a term fixing a date after which the defendant may apply for revocation of vacation of the order, which must be at least 12 months after the date of issue of the final order.

²⁶⁵ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s36.

²⁶⁶ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29(4).

²⁶⁷ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29(4)

²⁶⁸ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s31(1).

²⁶⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s31(2).

²⁷⁰ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s31(2aa). NB *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s31 (2ab) provides that " In determining whether a contravention of an intervention order is a second or subsequent such contravention for the purposes of subsection (2aa), any previous offence against subsection (2) or (2aa) (whether committed before or after the commencement of this subsection) of which the defendant has been found guilty will be taken into account, but only if the previous offence was committed or alleged to have been committed within the period of 5 years immediately preceding the date on which the offence under consideration was allegedly committed."

²⁷¹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s31(2a).

Implementation of Existing Laws in South Australia

South Australia's response to family and domestic violence is multifaceted and involves a collaboration across a range of agencies, including the South Australian Police, Office for Women, Department for Child Protection and other critical government agencies and service providers.

Policy Frameworks and Initiatives to Combat Family and Domestic Violence

In 2018 the incoming Marshall Government introduced the *Committed to Safety: A framework for addressing domestic, family and sexual violence in South Australia* (the 'CTS Framework'), a policy framework with a view to providing a 'clear and considered plan for action in relation to preventing domestic, family and sexual violence'. The Family Safety Framework' features three pillars of response: primary prevention; service and support and 'justice'.²⁷² The CTS Framework is then underpinned by two 'enablers' described as 'Data and Evidence Base' (referring to measures such as the Information Sharing Guidelines to provide a state-wide approach to information sharing practices wherever there are threats to a person's safety and wellbeing) and 'Evaluation and Monitoring our Impact'.²⁷³ The CTS also recognises the need to focus on specific population groups, including children/youth, Aboriginal people, women with disability, CALD people, older women, and regional and remote people).

Specific actions are broken down into short, medium and long-term goals, and include reference to the Intervention Orders regime in the context of:

- recognising the important role played by the Women's Domestic Violence Court Assistance Service (WDCAS) (discussed below) to support women affected by domestic and family violence to apply for Intervention Orders through the court system and/or to apply to vary an intervention order, or report a breach; and
- referring to the amendments to the Intervention Orders Act passed in 2018 that strengthen penalties for breaches and make other changes to the way police provide evidence to the Court including when applying to vary an Intervention Order.²⁷⁴

The **Family Safety Framework (FSF)** was developed under the auspice of the South Australian Government's Women's Safety Strategy and Keeping Them Safe - Child Protection Agenda, to drive improved, integrated service responses to violence against women and children in South Australia.

The FSF seeks to ensure that services to families most at risk of violence are provided in a more structured and systematic way, through agencies sharing information about high risk families and taking responsibility for supporting these families to navigate the system of services to help them.

Information about people at serious risk of violence is shared between agencies in accordance with the Information Sharing Guidelines for promoting safety and wellbeing. The statewide implementation of the Family Safety Framework was completed in November 2013.

²⁷² Office for Women, *Committed to Safety: A framework for addressing domestic, family and sexual violence in South Australia*, South Australian Government (2018) available at <https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0007/78604/Committed-to-Safety.pdf> (accessed 22 April 2022)

²⁷³ This refers to oversight mechanisms such as the Chief Executives Group chaired by the Minister for Human Services, with the Assistant Minister for Domestic and Family Violence Prevention and the Key Partner Network co-chaired by the Office for Women and the Coalition of Women's Domestic and Aboriginal Family Violence Services. See *Committed to Safety*, above.

²⁷⁴ *Statutes Amendment (Intervention Orders and Penalties) Act 2021* (SA).

The FSF is underpinned by an agreement across Departments and Agencies for a consistent understanding and approach to domestic and family violence that has a focus on women's and children's safety and the accountability of perpetrators.²⁷⁵

Family Safety Meetings are held regularly (usually fortnightly) in 17 police local service areas in South Australia.²⁷⁶

Family Safety Meetings are chaired by South Australia Police, including the South Australian Police Family Violence Investigation Section (FVIS) for those in metropolitan areas.

A Family Safety Framework Practice Manual has been developed.²⁷⁷ In addition, detailed information and forms are available including a detailed DV Risk Assessment Form ²⁷⁸ – that includes a focus on the offender's behaviour, the offender's personal characteristics as well as situational factors and the victim's vulnerability, as well as Positive Action Guidelines and Perpetrator Guidelines for Family Safety Meetings. A 2008 evaluation of the Family Safety Framework trials was conducted by the Office of Crime Statistics and Research (AGD).²⁷⁹

In addition to the Family Safety Framework, a number of other initiatives have been developed and led by the Women's Safety Service SA, designed to support families and individuals who may be experiencing or at risk of experiencing family and domestic violence. These include:

- **Thriving Families** – which aims to highlight the individual needs of families when domestic and family violence are present, and to build capacity in specialist and community services to meet those needs. Women's Safety Services SA is currently developing a strategic direction for working with children who enter our services with their mother or caregiver. This involves providing the theoretical and evidence-based position that underpins the work we do and then attending to the specific needs of children, which includes working to heal the relationship between mothers and children. WSSSA is currently in partnership with Flinders University's SWIRLS Centre (Social Work Innovation Research Living Space), and funded through the Early Intervention Research Directorate), to explore a shared approach between Department for Child Protection and WSSSA that influence the movement of children into Out Of Home Care.
- **Multi-Agency Hub** - a collaboration and integration of services dedicated to the safety of women and children, as well as the accountability of perpetrators of domestic and family violence. Women's Safety Services SA aims to provide safety to women and their children by ensuring the representation of domestic and family violence is trauma informed, and makes visible the perpetrator of violence and his responsibility to the family's safety.
- **DCS GPS Technology Evaluation Trial** - Women's Safety Services SA is in partnership with the Department for Correctional Services in a federally funded research project evaluating GPS technology bracelets and how they assist in limiting men's current and future offending. The organisation has carried out a qualitative study that analyses women's sense of reality of safety while their ex-partners are on GPS tracking technology. This part of the research is complete and awaits

²⁷⁵ The core agencies involved are: South Australia Police; Department for Child Protection; SA Housing Authority; Department of Human Services; Department for Correctional Services; SA Health (inc community, women's health, Aboriginal health, midwifery, nursing and hospital staff); Adult Mental Health Services; Drug and Alcohol Services SA; Department for Education; Women's Domestic Violence Services (NGO).

²⁷⁶ These are: Adelaide Hills; APY Lands; Berri [Riverland]; Ceduna; Coober Pedy; Eastern District and Western District; Fleurieu/Kangaroo Island; Gawler Barossa; Limestone Coast; Murray Bridge; Northern District; Port Augusta; Port Lincoln; Port Pirie; Southern District; Whyalla.

²⁷⁷ NB the Family Safety Framework Practice Manual is currently under review, however, the 2015 manual is available for use in the meantime. Some content may be dated (eg agency names) but such content does not effect the practical delivery of the FSF or the running of FSMs. It should be noted that an updated version will be in place later this year.

²⁷⁸ This form is available for download via <<https://officeforwomen.sa.gov.au/womens-policy/womens-safety/family-safety-framework>>.

²⁷⁹ Office of Crime Statistics and Research, *Family Safety Framework Final Evaluation Report*, (2008) South Australian Government available at <https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0012/5142/FSF-Evaluation-Final-Report.pdf> (accessed 5 May 2022).

the evaluation conducted by the Department for Correctional Services on men wearing GPS bracelets and their offending.

Accessing Intervention Orders in South Australia: Specialist Police and Court Services

Most people who seek to access Intervention Orders in South Australia are women who are experiencing violence, abuse or threats of harm, often perpetrated by their current or former partners.

Women who are experiencing domestic or family violence can seek free legal assistance from the WDVCS²⁸⁰ or another legal service provider or support service including the Women's Legal Service, the Legal Services Commission, Southern Community Justice Centre, Northern Community Legal Service and WestSide Lawyers, Aboriginal Legal Rights Movement, Uniting Communities Law Centre, Centre Care Family Mediation Services or a private lawyer.

The **Women's Domestic Violence Court Assistance Service** (WDVCAS) is a specialist legal service providing support to women affected by domestic and family violence.

Operated by the Legal Services Commission, WDVCS provides a range of services primarily relating to helping women apply for intervention orders and ending tenancy agreements. Women can receive free legal assistance to navigate the Magistrates court processes of applying for, varying, or revoking an intervention order. Assistance can also be provided in reporting breaches of an intervention order and in applying for relevant tenancy orders through the South Australian Civil and Administrative Tribunal.

The service assists women throughout all of South Australia with legal practitioners available at multiple locations, allowing for accessible, comprehensive legal advice and assistance to be provided. WDVCS works closely with other services providing support to women experiencing domestic and family violence, and can refer clients to these services accordingly.

Applications for court issued Intervention Orders can also be made at a local police station when the applicant can point to behaviour which amounts to a criminal offence, or the threat of such an offence. At the police station, an officer will ask the applicant to make a statement about the defendant's conduct and why an Intervention Orders is needed.²⁸¹ The applicant's statement will then be sent to the police prosecutor who will determine whether there are sufficient grounds to ask the court for an order. If the matter proceeds to a court application, the police prosecutor will present the application on behalf of the applicant.²⁸² The South Australian Police's Website contains a range of useful information packs for potential Intervention Order applicants, including information translated into a number of different languages, as well as a list of referral agencies to assist applicants gain access to special legal advice and other social support.²⁸³

For many years, the South Australian Police have prioritised combatting family and domestic violence, and contributes positively to multi--agency responses to this complex problem, including through the establishment specialist Family Violence Investigation Sections and the Multi-Agency Protection Service. As the South Australian Police's 2015-16 Annual Report explains:

²⁸⁰ Legal Services Commission SA, *Law Handbook*, Chapter 21, available at <<https://lawhandbook.sa.gov.au/ch21s07s02.php>> (accessed 5 May 2022). The WDVCS is a specialist legal service, operated by the Legal Services Commission, providing support to women affected by family and domestic violence. Women can receive free legal assistance to navigate the Magistrates court processes of applying for, changing, or removing an intervention order. Assistance can also be provided in reporting breaches of an intervention order.

²⁸¹ South Australian Police Website, *Intervention Orders*, available at <<https://www.police.sa.gov.au/your-safety/intervention-orders>> (accessed 5 May 2022).

²⁸² Ibid.

²⁸³ Ibid.

Domestic violence permeates every level of society and endangers people of all backgrounds and experiences. The South Australian Police continues to address the issue of domestic violence in South Australia and its widespread impact on the community through an integrated, multi-agency approach and by providing support for all victims of domestic violence. The South Australian Police continues to respond strategically to the incidence of domestic violence in the community. In 2015-16, the South Australian Police began rolling out the Domestic Violence Investigators Course for all specialists attached to Family Violence Investigations Sections, and other areas where this specialist skill is required. The Multi Agency Protection Service (MAPS) is an ongoing integrated information sharing model to manage domestic violence and related child protection matters. MAPS currently shares information on all high risk domestic violence matters and a small percentage of medium and standard risk matters between the South Australian Police, the Department for Correctional Services, the Department for Education and Child Development, the Department for Communities and Social Inclusion, and SA Health. By collectively assessing, analysing and responding to emerging domestic violence matters reported to the South Australian Police, MAPS aims to reduce the incidence and impact of domestic violence in the community.²⁸⁴

Since 2017, applications for Intervention Orders in South Australia are heard by the Family Violence Court, a specialist court in the Magistrates Court that hears criminal matters connected with family and domestic violence and abuse as well as the issuing of intervention orders.²⁸⁵ Family Violence Courts operate at the Adelaide, Port Adelaide, Elizabeth, Christies Beach, Murray Bridge, Mount Gambier, Port Augusta and Whyalla Magistrates Courts.²⁸⁶ Despite the efforts of court staff, Magistrates and other support services, attending Court to lodge an application, file an affidavit or provide oral evidence can be a challenging, traumatic and sometimes overwhelming experience for many people who are experiencing or who have witnessed family and domestic violence.²⁸⁷ As discussed above, past research suggests that many potential applicants for Intervention Orders decide not to proceed with the application at this stage.²⁸⁸

²⁸⁴ South Australian Police, *Annual Report 2015-2016* (2017) South Australian Government, available at <https://www.police.sa.gov.au/__data/assets/pdf_file/0020/363215/Annual-report-2015-2016.pdf> (accessed 22 April 2022).

²⁸⁵ This was a recommendation made by the Social Development Committee, Inquiry into Family and Domestic Violence, Parliament of South Australia, (2016).

²⁸⁶ Courts Administration Authority South Australia, Magistrates Court Website, *Intervention Programs*, available at <<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Treatment-Intervention-Court.aspx>> (accessed 5 May 2022).

²⁸⁷ See e.g. T Booth, M Kaye, and J Wangmann, 'Family Violence, Cross-examination and Self-represented Parties in the Courtroom: The Differences, Gaps and Deficiencies' (2019) 42(3) *University of New South Wales Law Journal* 1106–1142; Samantha Jeffries, Rachael Field and Christine EW Bond, 'Protecting Australia's Children: A Cross-Jurisdictional Review of Domestic Violence Protection Order Legislation' (2015) 22(6) *Psychiatry, psychology, and law* 800. Cf recent changes made in light of COVID-19 that have led to the increased use of online means of obtaining evidence from applicants and witnesses in Magistrate's hearings, above.

²⁸⁸ See e.g. J Wangmann, 'Incidents v Context : How Does the NSW Protection Order System Understand Intimate Partner Violence?' (2010) 34(4) *The Sydney Law Review* 695–719; M Jesús Cala, M Eva Trigo, FJ Saavedra, 'Women's Disengagement from Legal Proceedings for Intimate Partner Violence: Sociodemographic and Psychological Variables' (2016) 8(1) *The European Journal of Psychology Applied to Legal Context* 35–42.