

**Submission to Victoria Law Reform Commission
consultation on Examining Aspects of Family Violence
Intervention Orders for Children and Young Adults
(Stage I)**

2 May 2025

Northern Community Legal Centre

Contents

About Northern Community Legal Centre (Northern CLC)	3
Foundation of our Submission	3
Question 1 - Your experience of how the law is applied	5
Question 2 & 3 – Impact of the law and opportunities for reform	5
Summary of Recommendations	10

About Northern Community Legal Centre (Northern CLC)

Northern CLC's purpose is to ensure equal access to justice for all in Melbourne's North-West region through the provision of legal services, community legal education and law reform initiatives. Northern CLC prioritises the legal needs of people living with multiple forms of disadvantage and marginalisation, including refugee and newly arrived people, victims-survivors of family violence, people with mental illness and other forms of disability, young people, people experiencing homelessness, Aboriginal and Torres Strait Islander peoples, and the LGBTQIA+ community.

Northern CLC was formed in 2016 from the merger of two legal services with a 50-year history in Melbourne's North-West. Our catchment of Merri-bek, Hume, and Mitchell Shire is home to communities that experience the most structural and systemic disadvantage in Victoria. A keystone to our success has been working closely with our community to identify barriers to access to justice and engaging in advocacy to achieve systemic change that creates a more equitable justice system. Our vision is that the people of Melbourne's North-West region have access to justice through the provision of free legal information, advice, duty lawyer services, casework assistance, education and community development activities.

Northern CLC has an office in Broadmeadows and a satellite office in Wallan. Legal services are delivered in person, at outreach locations and by telephone to ensure our services are as accessible as possible.

Foundation of our Submission

Northern CLC designs and implements community development and legal service delivery projects that address access to justice issues. In partnership with community and multicultural services as appropriate, our integrated projects aim to prevent and respond to systemic discrimination perpetuated by the justice system. As a generalist community legal centre, Northern CLC provides legal advice and advocacy across family violence, migration, family law, child protection, crime, employment, tenancy, debts, fines and victims' compensation areas of law. Due to the high family violence legal need identified in our catchment, we deliver targeted family violence projects.

We currently deliver the following projects to support victims-survivors of family violence, including children and youth.

- The *Take the First Step Project* trains groups of local migrant and refugee women to become family violence peer educators so that they can, in turn, provide accurate information on legal rights to other women in their communities.¹
- The *Safe Landing Project* provides wrap-around family violence and migration support to women on temporary visas (previously piloted as the 'Indian Women's Family Violence Project').²
- The *NWEP Project* provides wrap-around family violence support to women connected to maternal child health services in the North-West.³
- The *Financial Divide Project* facilitates lawyer-assisted property mediations for victim-survivors of family violence who are at risk of homelessness.
- The *Working Women's Centre*, in partnership with Women's Legal Service Victoria, South-East Monash Legal Service and Westjustice, provides women and non-binary people with employment legal advice and advocacy.

¹ 'Take the First Step', Northern Community Legal Centre <<https://www.northernclc.org.au/take-the-first-step-project>>.

² 'Safe Landing Project (Extension)', Northern Community Legal Centre <<https://www.northernclc.org.au/safe-landing>>.

³ 'North-West Enhanced Pathways', Northern Community Legal Centre <<https://www.northernclc.org.au/north-west-enhanced-pathways>>.

- The *Safe Steps to Legal Rights Project* provides wrap-around family violence legal support to those residing in family violence refuges in the North.

We also deliver two projects that specifically target young women impacted by gendered violence, including family violence.

- The *Take the Next Step Project* trains young women to become peer educators so they can support other young women in making informed choices regarding their relationships, bodies, and economic security.⁴
- The *RISE (Rights, Independence, Self-Empowerment) Project* provides targeted financial abuse legal support, education, and personal development skills to young women under 25 who are experiencing family violence.⁵

Through these projects as well as through our family violence clinics at our Broadmeadows and Wallan offices, and outreach to the Broadmeadows Orange Door, Safe Steps crisis accommodation sites and Salvation Army crisis accommodation site, our lawyers provide legal advice and advocacy on the Family Violence Intervention Order (FVIO) application process.

Our lawyers also deliver FVIO support to victims-survivors of family violence through the Pre Court-Engagement Service and Duty Lawyer Service at the Broadmeadows Magistrates' Court, which has been a specialist family violence court since 2022. Four days a week, our lawyers provide free advice, advocacy and representation to victims-survivors who require legal support through the duty lawyer service. This includes providing legal advice prior to the hearing date, pre-court negotiation with Victoria Police, AFMs and/or Respondents (or their representative) as appropriate, and representation in mention and directions hearings. We act on behalf of victims-survivors who have made their own application to the court as well as those who have had applications made by Victoria Police. Our FVIO legal work is with victims-survivors of family violence, whether they are the AFM or have been misidentified as the perpetrator and listed as a Respondent in a FVIO application.

In the current financial year to date, 67% of the clients we have supported with FVIO legal matters have had children under the age of 18 in their care. Our legal work is based on the instructions of our client, including their instructions around the legal protections required for their children under the age of 18 years. We provide holistic legal services to victims-survivors of family violence that directly relates to their children, including provision of FVIO, child protection and family law parenting legal support. Our lawyers do not seek instructions directly from our client's children but do take instructions from parents of the child's communicated wishes.

Northern CLC provides this submission drawing upon our service delivery experience, evaluations and research projects. This submission responds to Stage 1 of the Victorian Law Reform Commission's (VLRCs) consultation. We welcome the opportunity to provide any further submissions to the Victoria Law Reform Commission's consultation in relation to this stage or future stages; this includes in person and written submissions.

Contact

Jenni Smith
Chief Executive Officer
Northern Community Legal Centre
Tel: (03) 9310 4376 / Email: jsmith@northernclc.org.au

⁴ 'Take the Next Step', Northern Community Legal Centre <<https://www.northernclc.org.au/take-the-next-step>>.

⁵ 'RISE (Rights, Independence, Self-Empowerment) Project', Northern Community Legal Centre <<https://www.northernclc.org.au/young-womens-economic-empowerment>>.

Question 1 - Your experience of how the law is applied

Does the protection of an order extend after a protected person (child of the AFM) turns 18?

Northern CLC represents AFMs in FVIO court proceedings. This includes FVIO applications where the AFMs' children are listed as protected persons. Less frequently, we represent AFMs who are under the age of 18 themselves. Northern CLC advocates for FVIO orders to be put in place for extended periods where there is need for extended protection, including orders that are for multiple years or are indefinite.

Our lawyers commonly advocate that orders remain in place after a protected person (child of the AFM) turns 18. In response to our lawyers' advocacy during FVIO hearings, there have been inconsistent responses from the court. While some Magistrates comment that orders will continue to protect the protected person (child of the AFM) after they turn 18, other Magistrates indicate that while the order will continue to protect the AFM for the duration of the order, the protected person (child of the AFM) will only receive the protection of the order until they turn 18, at which point they are required to make their own application if they would like further protection. We note that the actual orders rarely if ever reflect this different approach but instructions to parties are inconsistent and confusing. This submission explains the impact of the court's inconsistent approach in further sections.

Can the AFM extend a FVIO, including the ongoing protection of a protected person (child of the AFM) who is now over 18?

Northern CLC's experience is that when AFMs seek to extend FVIOs that include a protected person (child of the AFM) that is now over the age of 18, comments are made by the Magistrates that the protected person (child of the AFM) cannot be a protected person on the extended order and are required to make their own application for a new order listing them as the AFM.

Question 2 & 3 – Impact of the law and opportunities for reform

Ongoing protection for protected persons (child of the AFM) after they turn 18

Northern CLC advocates for orders that extend beyond a protected persons 18th birthday if the history and risk of family violence indicates ongoing protection is required regardless of the protected persons' age. When high risk family violence is present and there is evidence to suggest that there is a high risk of future family violence, the longer order reflects the assessment of ongoing protection. The longer order reduces the burden on the AFM and protected persons to go through the application process again when there is already sufficient evidence to support a long order. It also reduces the burden on the court system, by reducing the number of applications progressing through the court system. Below is a casestudy based on an actual client which reflects best practice

Case Study 1.

Stacey applied for a Family Violence Intervention Order to protect herself and her 9-month-old baby, Otis, from her husband, James. Stacey experienced emotional, verbal and financial abuse over several years. James was physically violent towards Otis resulting in a hospitalisation, charges and a conviction. Northern CLC represented Stacey in a duty lawyer capacity and advocated for an extended order to protect Stacey and Otis. The court determined that an indefinite order was appropriate to protect both Stacey and Otis.

Northern CLC is of the view that protected persons who turn 18 before the end of the order they are listed on, should retain the protection of the order until the order ends. In our experience,

Magistrates commonly make orders that include children who will turn 18 after consideration of their need for ongoing protection. This practice could be more consistent if codified.

Recommendation 1.

The *Family Violence Protection Act 2008 (VIC)* (“FVPA”) should be amended to make explicit that FVIOs listing protected people under the age of 18 continue to protect all protected persons for the duration of the order, regardless of whether they turn 18 or not, unless specified otherwise. The court should retain discretion to make orders that state otherwise.

We acknowledge the benefits of FVIOs continuing to offer protections to protected persons (children of the AFM) after they turn 18, while also recognising that increased rights should be available to protected persons once they become legal adults. We recommend a model be adopted that assumes ongoing protection but does not curtail rights.

Protected persons who are over the age of 18 and are listed as the AFM on a FVIO, should have access to a simplified process to have the order varied to change the conditions that apply to them. For example, if a full no contact order is in place, a protected person over the age of 18 could apply to have the order varied to reduce the conditions that apply to them, except for removing a condition that prohibits the respondent from committing family violence against the protected person. This allows the now adult child to have greater agency, while acknowledging that the court has deemed the family violence risk of a nature that made it appropriate for protection to continue after they turned 18. Northern CLC acknowledges that reform could occur to make the application to vary for this cohort an ex- parte process to prevent this being a source of systems abuse by the perpetrator.

Recommendation 2.

Where the protected persons (child of the AFM) are over the age of 18, they should be able to apply for a variation of the order with a reduction of the conditions that apply to them. This application should be heard ex-parte, providing the court with the opportunity to confirm the applicant seeking the variation understands the impact of the varied order. The AFM and Respondent should then be served with the order so that all parties are aware of the new conditions.

Voice for protected persons under the age of 18

Northern CLC provides legal advice to victims-survivors on how FVIOs provide protection for their children, including if the order is to extend beyond their childrens’ 18th birthday. As our clients’ children are usually not our clients, we do not provide them with advice directly. Our lawyers report being approached by our clients’ children, particularly those between the ages of 14 and 18, seeking advice and support for themselves. These young people often express a desire for a different outcome to that which has been expressed by our client. The law and legal system does not currently allow for these young people to easily receive information or advice about how the order seeks to protect them, the duration of the order and/or their legal rights. These children are not parties to proceedings themselves and there are limitations on how their opinion can be heard in FVIO proceedings.

Specialist family violence courts have Family Violence Applicant Practitioners and Family Violence Respondent Practitioners that provide parties with information about court processes as well as family violence supports applicable to them. These practitioners play a vital role in supporting parties and also supporting the court’s function through the conduct of family violence risk assessments. These workers do not engage with children and young people

protected by the order, instead gauging the risk to children and young people through the information gleaned from the AFM or Respondent.

We recommend that an Independent Children's Consultant role be incorporated into the specialist family violence court structure. The Independent Children's Consultant would be responsible for conducting risk assessments, providing children and young people with information and referrals including to a lawyer as appropriate, and providing the court with recommendations if requested. The Independent Children's Consultant would provide recommendations based on their risk assessment, which may note the child's preference, but they would not be an advocate for the child, recognising that their assessment of the child's risk may not align with the young person's perceptions or preferences.

The Court should stand down proceedings and order a referral to the Independent Children's Consultant to allow for a risk assessment in circumstances where:

- A child has expressed a view that they do not want to be on the order (if expressed to police, a duty lawyer or staff member of the court)
- The child listed as a protected person doesn't currently live with the AFM
- A non-parent guardian is the AFM.

Engagement with the Independent Children's Consultant should be voluntary.

In making this recommendation to include an Independent Children's Consultant, we have considered how a child's wishes may be heard without overriding the protective powers of the court and the need for court efficiency. We have not provided recommendations to introduce a duty lawyer for children as this would result in significant delays to the court process, without sufficient benefit to the child, however we suggest that the Independent Children's Consultant could refer the child to a lawyer in special circumstances.

Recommendation 3.

Children should be provided with the option to access an Independent Children's Consultant, provided by the court, to gain support and information about how the interim and final FVIO order impacts them. The Independent Children's Consultant would be empowered to conduct risk assessments with the young person to inform court decision making. Engagement by the young person with the Independent Children's Consultant should be voluntary.

Protected persons (child of AFM) to seek extension of FVIO listing them as AFM, if the order protecting them is ending and they are over 19 years.

Northern CLC has supported AFMs who express distress at being unable to include their young adult children on their FVIO when making an application for an extension. Our clients believe that their young adult child requires the continued protection of the order, and they are concerned about the trauma that will be experienced if the young adult child is required to go through the process themselves.

The AFMs also hold information about the safety risks that the adult child may not know the extent of. Our clients who have acted protectively to prevent their children from being indirectly or directly impacted by family violence, hold knowledge of the history of family violence, the attempts and threats to harm the children, or other risk factors that the adult children may not themselves be fully aware of. Victims-survivors do not wish to traumatise their adult children by providing them with further information about family violence to support the adult child/ren's

own application. When adult children are required to make new applications before the court, the court does not consider the evidence provided in the previous order unless the adult child provides it.

Case Study 2.

Raleigh applied for a FVIO to protect herself and her two children, Steph (17yrs) and Kyle (13yrs) from her husband Bernie. Raleigh, Steph and Kyle experienced verbal and emotional abuse, including controlling and coercive behaviors. Bernie was charged with child sex offences, relating to other children. A five-year FVIO was granted, prohibiting Bernie from committing family violence, being within 100m of the protected person's home or place of work/education or contacting them. While the order was in place, Bernie breached the order over 30 times, including by approaching Steph and Kyle at school and through social media. While the FVIO was in place, Child Protection became involved, and orders were made restricting the contact Bernie could have with Steph and Kyle further. When the FVIO was ending, Raleigh applied to have the order extended and was informed that neither of her children could be listed as protected persons on the extension application as they were both over 18 years. Raleigh was distressed that Steph and Kyle would need to make their own applications as their interactions with the FVIO process and Child Protection had been traumatising. Raleigh feared that her now adult children would not have the emotional or psychological capacity to progress their own application and would be left without legal protections.

Northern CLC has some experience, although limited, of supporting adult children applying for FVIOs, when they were previously protected under an application made by their parent or guardian. These clients have expressed distress at having to prepare evidence of the family violence impacting them when the court already holds evidence of this in relation to their parent or guardians' previous application for an order.

When an application is made to vary, revoke or extend and a protected person is now over the age of 18, they should be provided with the opportunity to make their own application for a FVIO and that application process should allow the existence of the earlier FVIO and any breaches of the FVIO that relate to them to be considered evidence of family violence. Adult children may not have evidence of all of the family violence that has occurred that relates to them, if their parent or guardian has kept this from them for protective reasons. Where the court holds evidence about family violence, including breaches of FVIOs relating to the adult child, as prepared by Victoria Police, child protection, or family violence services, this evidence should be given weight in the adult child's application.

Recommendation 4.

Applications for FVIOs made by victims-survivors who no longer have the protection of a FVIO of which they were a protected person, because they have turned 18, should allow as evidence the existence of the past FVIO and any breaches of that FVIO that pertain to the applicant of the new order.

Additional consideration should be given to how young people are notified that they are no longer under the protection of a FVIO. This may occur because they have turned 18, or because the AFM has applied to vary, extend or revoke an order. In this instance, young people should be provided with the opportunity to take additional actions to protect themselves, including applying for their

own FVIO based upon evidence previously provided to the court in their parent's application. Accordingly, processes will need to be implemented by the court to ensure that protected young people are informed and are provided with appropriate referral information to enable them to seek support.

Recommendation 5.

Protected persons over the age of 18 who may lose the protection of a FVIO due to an application to vary, revoke or extend an order, should be notified by the court of the application.

Consistency in meeting the intention of proposed reforms

Northern CLC continues to witness Magistrates expressing a reluctance to include children as protected persons or include no contact conditions, despite the presence of family law exceptions. There is a potential unintended consequence of making the above reforms that Magistrates will be further disinclined to grant young people the protections sought. A reform regime must include direction to Magistrates as to the purpose of the reforms and the primary purpose of the FVIO as a protection mechanism that does not inherently preclude parents from engaging in family law parenting arrangements.

Recommendation 6.

Any reforms made to the FVPA pertaining to the protections for children must be accompanied by a direction to Magistrates to ensure the purpose of the reforms are realised and do not result in a reduction of protections for children and young people.

Summary of Recommendations

Recommendation 1.

The *Family Violence Protection Act 2008 (VIC)* (“FVPA”) should be amended to make explicit that FVIOs listing protected people under the age of 18 continue to protect all protected persons for the duration of the order, regardless of whether they turn 18 or not, unless specified otherwise. The court should retain discretion to make orders that state otherwise.

Recommendation 2.

Where protected persons (child of the AFM) are over the age of 18, they should be able to apply for a variation of the order with a reduction of the conditions that apply to them. This application should be heard ex-parte, providing the court with the opportunity to confirm the applicant for variation understands the impact of the varied order. The AFM and Respondent should then be served with the order so that all parties are aware of the new conditions.

Recommendation 3.

Children should be provided with the option to access an Independent Children’s Consultant, provided by the court, to gain support and information about how the interim and final FVIO order impacts them. The Independent Children’s Consultant would be empowered to conduct risk assessments with the young person to inform court decision making. Engagement by the young person with the Independent Children’s Consultant should be voluntary.

Recommendation 4.

Applications for FVIOs made by victims-survivors who no longer have the protection of a FVIO of which they were a protected person, because they have turned 18, should allow as evidence the existence of the past FVIO and any breaches of that FVIO that pertain to the applicant of the new order.

Recommendation 5.

Protected persons over the age of 18 who may lose the protection of a FVIO due to an application to vary, revoke or extend an order, should be notified by the court of the application.

Recommendation 6.

Any reforms made to the FVPA pertaining to the protections for children must be accompanied by a direction to Magistrates to ensure the purpose of the reforms are realised and do not result in a reduction of protections for children and young people.