5 May 2025

Hon Jennifer Coate AO
A/Chair, Victorian Law Reform Commission

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Dear Chair

Submission to Victorian Law Reform Commission on the Community Law Project: Examining Aspects of Family Violence Intervention Orders for Children and Young Adults (Stage 1 – Protection for children)

We welcome the opportunity to provide feedback on your Community Law Reform Project, Examining Aspects of Family Violence Intervention Orders for Children and Young Adults.

Youthlaw is Victoria's specialist community legal centre for children and young people up to 25 years of age. Our purpose is to provide accessible legal services to young people and their advocates, focusing on unmet legal need and addressing systemic legal and social justice issues. Youthlaw's vision is to create a just and equitable society for and shaped by young people.

As part of our core practice, we provide assistance to children and young people who have used and / or experienced family violence. The Family Violence Program at Youthlaw is an integrated practice whereby lawyers work alongside social work trained Youth Practitioners to support young people using and experiencing family violence with both their legal and non-legal needs.

Youthlaw represents children with family violence matters at the Melbourne Children's Court and the Broadmeadows Children's Court, operating a duty lawyer service four days per week. We utilise evidence-based, integrated models of service delivery to provide wrap-around legal and social work supports to young people in order to increase their safety and exit them out of the justice system at an early stage.

Summary of Youthlaw's position:

The *Family Violence Protection Act 2008 (Vic)* ("the Act") requires legislative amendments to establish a consistent approach for Magistrates when making Family Violence Intervention Orders ('FVIO') in cases where a child is listed as an affected family member ('AFM') on a substantive Application, where the child will turn eighteen before the order expires. Currently, different Magistrates apply varying approaches, and without a clear framework, there is a risk that vulnerable young people may be left without adequate protection upon turning eighteen or, conversely, that children may remain subject to orders they do not support once they turn eighteen.

Youthlaw does not support a blanket legislative amendment that mandates either that an order will expire when the child turns eighteen, nor do we support an amendment that directs that the order will continue despite the child turning eighteen. This is because both options fail to account for the individual needs of each young person. Instead, to best achieve the purposes of the Act (as referenced below) and to protect young people, we consider it essential that their views be considered by the Court where appropriate. We propose this can be best achieved by:

1. Amending the Act to direct Magistrates as to the fact they *can* make an order beyond a young person's eighteenth birthday; **and** including a direction to Magistrates that, where they are considering making an order for a child who would turn eighteen during the course of the order, they must (unless exceptional circumstances apply or the child lacks capacity to instruct a lawyer) order that the child be independently legally represented, so that the child can receive independent legal advice and in order that their views on the issue can be presented to the court.

2. Amending the Act to stipulate that where a child who was listed as an AFM on a FVIO, and that order has now expired, the young person has two years past their eighteenth birthday to apply to have that Application reinstated (rather than requiring the young person to make a fresh application in the Court).

The rationale of this position is explored in more depth below.

Youthlaw's observations on how the current legislative framework is being applied:

Youthlaw has seen an ongoing pattern of disparity in judicial interpretation and application of the legislation, which in turn makes it challenging for lawyers to provide clear advice or assurances about likely outcomes to our clients. In our experience, the greatest disparity arises between orders made in the Children's Court of Victoria ('CCV') (as a specialist Court), where judicial officers have dedicated expertise in matters surrounding young people, and those made in the Magistrates' Court of Victoria.

It is our experience that Magistrates in the CCV tend to acknowledge that children (particularly those over the age of 12) are victim-survivors in their own right whose views should be heard by the court separately from their parent, in appropriate circumstances. It is not uncommon for Magistrates in the CCV to make an order for children to be separately represented, where it is sought by the child under section 62 of the Act. In our experience, orders may be made for children as young as ten or eleven to be independently represented in appropriate circumstances. However, in the Magistrates' Court, it is far less common for consideration to be given to children as victim-survivors of family violence in their own right, with separate needs from their parents. As such, fewer section 62 orders are made and the court is less often informed by the views of the child when making FVIOs for their protection.

Regardless, in both MCV and CCV, it is not uncommon for Magistrates to make a final order for a family where one of the children listed as an AFM has their order expire much earlier than the rest of the family, purely because the child turns eighteen during the duration of the substantive order. This is concerning given, under the same set of circumstances, a Magistrate has deemed that the parent and other sibling(s) of that young person require the protection of a FIVO for longer. This inconsistency may place a young person at significant risk, where they are suddenly no longer protected by an order, despite the Court considering that there is ongoing family violence risk for the rest of their family.

Inconsistency with legislative purpose:

Youthlaw considers that the current legislative framework and its application is not consistent with the intended purpose of the Act. In particular, Youthlaw considers that an order expiring by virtue of a child turning 18, and for no other reason does not:

(a) Maximise safety for children who have experienced family violence[1];
(b) Prevent and reduce family violence to the greatest extent possible[2]; and
(c) Provide an effective and accessible system of family violence intervention orders[3]

Why a presumption that an order expires when a young person turns eighteen is not the ideal solution (and relevant impacts):

Beyond the significant safety concerns, orders made to expire when a young person turns eighteen (due to reaching adulthood) often create both legal and practical barriers should the young person wish to have the order extended for continued protection. This is because, if the order is made to expire when the young person turns eighteen, the onus is then placed on the young person to reapply to the Court to have that order extended. Youthlaw considers that young people seeking to have an order extended are likely to face the following barriers and risks:

Risk escalation

When a young person makes an application to extend a FVIO, this naturally requires the respondent to be served with the Application, and more than likely results in that person engaging in the Court process. While this is required to ensure procedural fairness for the respondent, this means that the young person is further exposed to the perpetrator of family violence. The Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) identifies that Court proceedings are an event that can significantly increase the risk of family violence escalating in a short timeframe[4]. Therefore, when considering whether to apply to extend a FVIO, a young person is likely to consider whether doing so may escalate the risk to their safety.

Merit test under the Act

Young people are likely to be disadvantaged by the legislated merit test under the Act, where they have to apply for an extension of an order. This is because the Act says that to extend a FVIO, a Magistrate must be satisfied, on the balance of probabilities, that if the order is not extended the respondent is likely to commit family violence against the protected person.[5] In other words, the young person would need to establish that there is an ongoing risk.

While the Act is clear that the power to extend applies regardless of whether or not the respondent has complied with the existing order[6], it is our observation that demonstrating ongoing risk can be very challenging in practice. This is particularly the case where some time has passed since the original order was made and there have been no breaches of the order reported.

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[1] Section 1(a), *Family Violence Protection Act 2008 (Vic)*
[2] Section 1(b), *Family Violence Protection Act 2008 (Vic)*
[3] Section 2(a), *Family Violence Protection Act 2008 (Vic)*
[4] Family Violence Multi-Agency Risk Assessment and Management Framework, Victorian State Government, 2018, page 27.
[5] Section 106(2), *Family Violence Protection Act 2008 (Vic)*
[6] Section 106(3), *Family Violence Protection Act 2008 (Vic)*

As such, where a young person asks the court to extend an order that has expired, whilst relying on the same set of facts as the original application that led to the ongoing protection of their parent / siblings, they are placed at a significant procedural disadvantage.

Re-traumatisation

An application to extend is essentially a duplication of the original application, which has already been determined. This process unnecessarily re-exposes the young person and their family to the court system and requires a re-telling of their story, which places young people at risk of re-traumatisation.

Difficulties navigating a complex system

The FVIO system is complex and difficult to navigate, particularly for young people who have experienced family violence and are often facing intersecting challenges. Young people are regularly unaware of FVIOs that are in place for their protection or against them. This is often because young people have not been included in the court processes that led to the intervention order being made in the first place. If young people are aware of FIVOs affecting them, they may not have copies of the orders, understand when they expire, or what the consequences might be if they do not apply to extend a FVIO in time.

Young people as a cohort are amongst the least likely to self-identify that they have a legal problem and then seek help. For those that do seek help, the justice system response they receive is not always child-focused or therapeutic.

Access to Legal Assistance

The services available to support a young person with FVIO matters are significantly less readily available for adults compared to children. Children who are party to matters in the FVIO jurisdiction are required to have legal representation (they cannot self-represent). Legal representation is generally guaranteed for children under eighteen, where a court has ordered that they be represented under section 62 of the Act. However, if a final intervention order protecting a child is made to expire when the child turns eighteen, and the young person wishes to have the order extended, access to legal representation and support services are not guaranteed.

The Court is clear that an application to extend must be made before the expiration of that order[7]. Practically, this means that when an order expires by virtue of the child turning eighteen, the application to extend will be made while still a child. While this may mean that young people who are able to initiate proceedings before turning 18 years of age have access to legal representation, the nuance of the legal aid grants process means that their representation will depend on the timing of when the young person turns eighteen in relation to their legal matter.

Further to this, there is limited support available to both children and adults who wish to get legal advice or make FVIO applications (including applications to extend orders) before court (i.e. before these applications get to the first mention date). It is generally at this point that parties to FVIOs are referred for legal representation, and to support services. Victoria Legal Aid guidelines don't generally fund assistance before court.

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This means that the process of completing paperwork and lodging applications to extend an order is often left to the child, which can create significant barriers to applying. While we note that some Community Legal Centres, like Youthlaw, are currently offering these services, this is reliant of the child actively seeking assistance, and the capacity to do so falls short of the demand.

Why a presumption that the order should continue past eighteen is not the ideal solution:

Youthlaw's position is that a legislative amendment that explicitly says that children automatically continue to be protected by a FVIO for the length of the order even if they turn eighteen, unless the court finds that there is a good reason not to do this, is not the optimum solution.

This is largely because this option fails to account for the views of the young person. While we acknowledge that there can be safety concerns and that the court must give consideration to the desirability of protecting children from unnecessary exposure to the court system, this must be balanced by recognising that when a young person turns eighteen, they are considered an adult under the law and should be given the same autonomy and agency as any other adult in the FVIO process. For example, under the Act where police make an application to protect an adult AFM, where that AFM does not consent to the making of the Application, the Court may only make a final order with limited conditions[8].

What constitutes a 'good reason':

However, if the preferred option is to make an amendment that specifies that a young person is to be protected by a FVIO for the length of the order even if they turn eighteen, unless the court finds that there is a good reason not to do this, we consider that the legislation should be clear regarding what constitutes a 'good reason'.

In our view, a good reason would be that the young person has had independent legal advice and put forward to the court that they do not support the application/the order continuing past their eighteenth birthday.

Youthlaw's Proposed Solution

Youthlaw considers that to best support young people in this setting, the following amendments should be made:

1. Amending the Act to direct Magistrates as to the fact they *can* make an order beyond a child's eighteenth birthday; **and** including a direction to Magistrates that, where they are considering making an order for a child who would turn eighteen, they must (unless exceptional circumstances apply or the child lacks capacity to instruct a lawyer) order that the child be referred to independent legal advice, before a final order is made.

   This proposed solution provides young people with the opportunity to participate in the process, and have their views heard on matters that will impact their lives. This does not mean that children must participate, but rather provides a clear opportunity to do so, should they wish.

[8] Section 75, Family Violence Protection Act 2008 (Vic)

This option provides flexibility to the Magistrate to make orders that are appropriate to the individual needs of the young person. Including:

- Where a young person does not support the order, the Magistrate can consider their views and make an order only until they turn eighteen, or remove them from the order entirely, ensuring the young person's agency is respected and their views are properly considered.
- Where the young person does want protection to continue, this option allows the court to set a longer duration that reflects their safety needs, rather than ending the order at eighteen (creating potentially significant risk). This also streamlines the process and removes the burden on the young person to apply for an extension as an adult, which as explored above can disadvantage them.

This proposed option is consistent with both the United Nations Convention on the Rights of the Child (UNCRC), which is clear that children have a right to express their views freely in all matters affecting them, and for those views to be given due weight in accordance with the child's age and maturity. The UNCRC is also clear that this right is applied by providing the opportunity to be heard in any judicial proceedings as appropriate under the legislation[9].

Beyond providing legal advice, this option also provides a pivotal point of contact with services for the child, allowing the lawyer to link the child in with non-legal supports. For example, Youthlaw lawyers work with social workers, who often (with the young person's consent) support young people with education around family violence and healthy relationships, safety planning and providing referrals to other services (such as mental health support, education and housing).

2. Amending the Act or relevant rules to stipulate that where a young person is no longer listed as a protected person on a FVIO from the time they turn 18, yet the order remains in place for the applicant and/or any other protected persons (either because a magistrate has made that specification as to duration or where the young person chooses to remove themselves from the order) the young person is given the option to reinstate the order if this is needed or wanted (until they are 25 years old).

   This option reflects Youthlaw's observation that young people often wish to explore a relationship with a parent or family member who they have previously been unable to as a child due to a FVIO. This option seeks to strike a balance between affording a young person autonomy to do so whilst ensuring there are appropriate and time efficient pathways to have an order reinstated should the young person require protection.

   This streamlined path is imperative to ensure young people can seek protection without being burdened by barriers (which mirror those discussed above in relation to applications to revoke).

Expanding specialist, integrated legal services for children in Victoria

It is our recommendation that the government invests in expanding specialist legal services for children and young people who are party to intervention order matters in Victoria. These services should be funded to provide holistic, integrated legal and social work supports to children to

[9] Convention on the Rights of the Child (1989), Article 12.

ensure that they are supported to participate in court processes and have their views considered in a way that promotes their autonomy and maximises safety.

Legal services that include family-violence trained social workers or youth practitioners can play a critical role in assessing risk and safety planning with young people who may be experiencing family violence. It is our experience that access to trauma informed, developmentally appropriate legal representation and social work support, can increase safety for children and their families, whilst minimising the impacts of known harms associated with justice system exposure.

Currently, whether or not a child can access specialist, integrated family violence legal support, depends on where they live. There is a critical need for youth specific family violence legal services across all courts and in particular, in regional areas which have high unmet need. The absence of dedicated services leads to poorer outcomes for young people and their families.

Youthlaw Observations – Case studies

Case Study 1: Josephine*

Josephine is a 16-year-old young person who self-referred to Youthlaw for assistance with an FVIO matter. Josephine was listed as an Affected Family Member ("AFM") in a FVIO application made by her mother, protecting her from her father. Josephine was listed on the order and an interim order was made without her views being considered by the Court.

Despite Josephine living with her father and him being her primary carer, the interim order made provided for full no contact, which meant that she could no longer live with her father, and he had to cease contact. Josephine did not agree with her mother's application, and did not consider that she needed protection from her father.

Youthlaw represented Josephine and was able to put forward her views to the Court. As an integrated service, Youthlaw was also able to provide social work support to ensure Josephine had safe accommodation while displaced from her father's house. Ultimately, after hearing Josephines views, the court agreed to vary the conditions of the order (as far as they related to the young person) to allow Josephine to return home with her father (so long as their father did not commit family violence while doing so).

Without seeking legal representation, it is likely that a final order would be made without Josephine's input which would have significantly impacted her ability to maintain a relationship with her father.

How Youthlaw's proposed solution could have supported this client:

In this scenario, we consider it would have been beneficial for the Magistrate to direct that Josephine was referred to a service for legal advice to ensure that her views aligned with the applicant. This would have removed the onus on Josephine, a child, to seek out legal representation herself and would have ensured that her views were provided to the court at the earliest opportunity. This approach would also reduce the disturbance to Josephine's living situation, minimise the disruption to her familial relationships, and prevent a final order being made into her adulthood, which she did not support.

***Not the clients real name**

Case Study 2 – John

Youthlaw assisted John, a 17-year-old who was listed as an AFM in a FVIO application made by his father protecting him from his mother. John was listed as an AFM on a final order, which had been extended multiple times, most recently when he was 16 years old. At no point did the Court seek John's views, despite considering extending the order beyond his 18th birthday.

As a result of the final order, John did not have contact with his mother during this time, which was over three years. By the time John turned 17, he sought independent legal advice through Youthlaw as he did not agree that he needed protection from his mother.

Youthlaw were able to assist John to apply to revoke the final order as far it related to him, to ensure he could resume a relationship with his mother. Ultimately, the Court considered John's views and, given his age, had the view that he should not be included on the final order, nor any future orders should the applicant apply for further extensions.

How Youthlaw's proposed solution could have supported this client:

In this scenario, Youthlaw consider it would have been best practice for the Magistrate to direct that John be referred for independent legal advice for the application to extend (when he was 16) given there was potential for an order to be made that would continue beyond John turning 18. Because this did not occur, it placed undue burden on John to apply to the Court to revoke the order.

***Not the clients real name**

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Yours faithfully,

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Youthlaw
147-155 Pelham Street, Carlton VIC 3053
PO Box 501, Carlton South VIC 3053
Ph: 03 9113 9500
www.youthlaw.asn.au