Can't you girls work this out?

LGBTQ+ VICTIM-SURVIVORS' EXPERIENCES OF VICTORIA'S FAMILY VIOLENCE INTERVENTION ORDER SYSTEM

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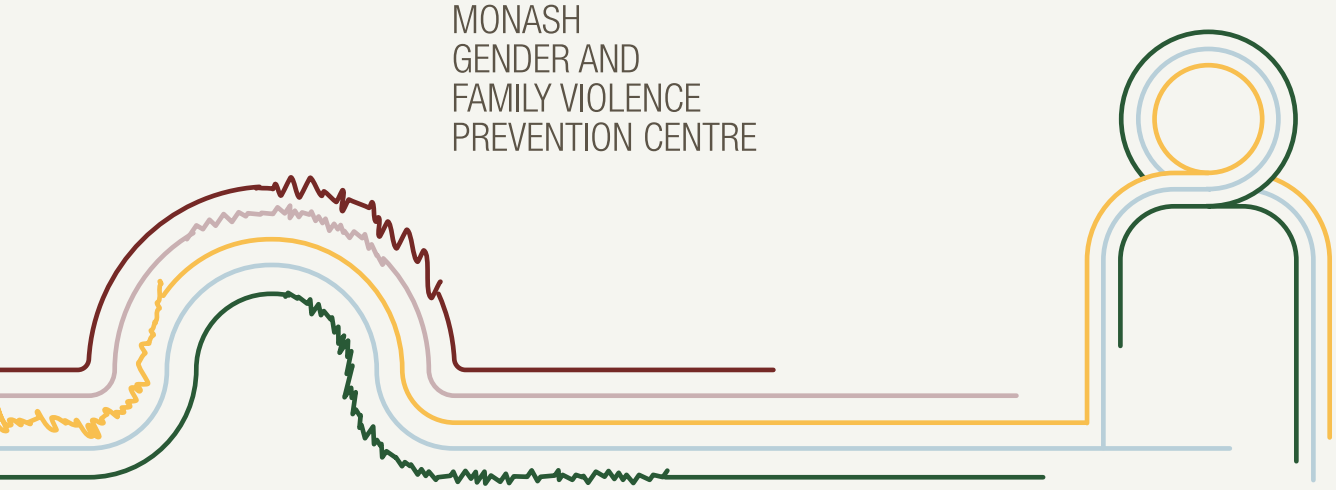

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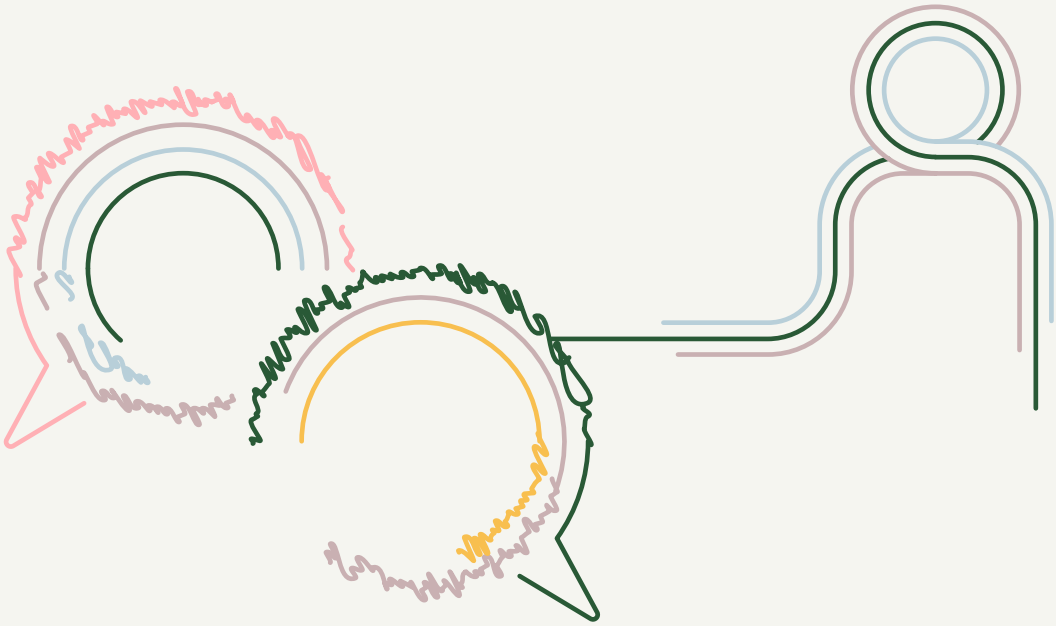
2 Introduction

This report draws on the research findings of a joint project between the Monash Gender and Family Violence Prevention Centre and the LGBTIQ Legal Service, Southside Justice.

The report examines the experiences of lesbian, gay, bisexual, trans and gender diverse, queer and questioning (LGBTQ+) family violence victim-survivors with Victoria's family violence intervention order (FVIO) system; it considers the experiences of LGBTQ+ victim-survivors who have engaged with the system as 'affected family members' (victims) and/or 'respondents' (perpetrators). The report offers unique insight into how LGBTQ+ victim-survivors are engaging with the law for protection from family violence, in addition to how the law is being used against them by abusers. The report makes a series of policy and practice recommendations aimed at improving legal and non-legal responses to family violence experienced by LGBTQ+ victim-survivors.



2.1 Terminology

Each demographic included within the 'LGBTQ+' acronym shares the commonality of a non-heteronormative sexual orientation or non-cisnormative gender identity. These communities have historically identified as a collective group as a form of solidarity in the face of adversity. However, these demographics are unique, and they experience family violence in different ways. Further, these identities do not exist in silos, with some persons identifying with multiple identities within the acronym. LGBTQ+ communities should be researched individually where data allows, because research conducted broadly on the experiences of 'the LGBTQ+ community' can lead to inappropriate generalisations about the experiences of otherwise vastly different communities (Taylor et al. 2018). Furthermore, we recognise that the question of which communities should be included when using an acronym can be contentious. The acronym LGBTQ+ was chosen for this project because it best represents the self-reported identities of the participants. For instance, no participants identified as having a variation of sex characteristics, so we are unable to reflect on the experiences of intersex persons. Of course, the acronym we use may be different to the acronym used by other organisations or participants referred to throughout this report.

In this report, we use the term 'family violence' to capture all forms of violence experienced by one family member and committed by another. This includes intimate partner violence. We use this term to be consistent with the Victorian legislative and policy context, where family violence is the chosen terminology.

Throughout the report, we also commonly refer to the family violence intervention order (FVIO) system as existing within the criminal legal system. FVIOs are indeed civil orders – they are a protective measure and for an order to be made, the lower burden of proof (on the balance of probabilities) is required to be met. However, given that the breach of an FVIO is a criminal offence, they are often referred to as existing within the 'quasi-criminal' legal system. Further, in Australia's unique policy context, police act as the gatekeepers of the FVIO system, largely responsible for initiating and prosecuting applications and enforcing breaches. Police also commonly bring forth criminal charges against perpetrators in addition to initiating an FVIO application. Given this context, we find it useful to refer to FVIOs as existing within the criminal legal system, locating victim-survivors' experiences with these orders within broader conversations about the criminal law's ability to protect victim-survivors from family violence (Goodmark, 2018).

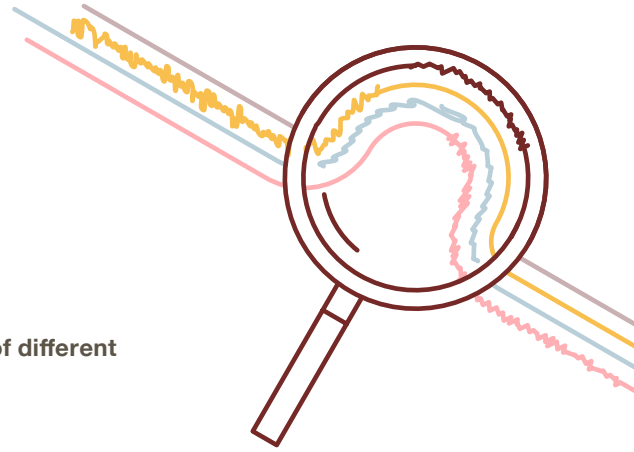
3 Executive summary

Intervention orders are a key pillar of legal responses to family violence in Australia. Decades of research has found that whilst intervention orders may improve safety outcomes for some (Dowling et al., 2018), they are generally viewed to be an ineffective mechanism in protecting victim-survivors (Douglas, 2008). There is a sizable body of research on how heterosexual cisgender women use intervention orders to navigate their safety from an abuser, but no Australian research has offered any meaningful insight into how lesbian, gay, bisexual, trans and gender diverse, queer and questioning (LGBTQ+) victim-survivors engage with intervention order systems.

This study offers unique insights into how LGBTQ+ victim-survivors engage with Victoria's family violence intervention order (FVIO) system. The project has four key aims:

- To document the circumstances in which LGBTQ+ victim-survivors come to be engaged with the FVIO system as an 'affected family member' (AFM) and/or a 'respondent'.
- To document LGBTQ+ victim-survivors' safety outcomes during and after engagement with the FVIO system.
- To provide new insight into LGBTQ+ victim-survivors' experiences of being misidentified as predominant aggressors in the FVIO system.
- To make policy and practice recommendations to improve service system responses to LGBTQ+ family violence.

This report draws on 41 survey responses and 21 in-depth interviews with LGBTQ+ victim-survivors who have engaged with the FVIO system in Victoria. Data was collected from April to July 2022.



3.1 Key findings

LGBTQ+ persons engage with the FVIO system in a range of different family violence contexts

Some participants sought protection from coercive and controlling partners. Others reported engaging with the system after incidents of physical violence within the context of relationship breakdown. Sometimes this involved bidirectional violence. Whilst most participants sought protection from a current or former intimate partner, family of origin violence also brought a number of participants into the FVIO system.

Half of the survey sample had been listed as a 'respondent' on an FVIO despite identifying as a victim-survivor of family violence.

Half of all survey participants reported being listed as a 'respondent' on an FVIO, with 37 per cent of participants having been listed as both a respondent and an AFM. As all participants identified as victim-survivors of family violence, these findings suggest that many participants have experienced 'legal systems abuse' via the FVIO system. The issue of the misidentification of predominant aggressors has received unprecedented attention in Australia in recent years, but minimal acknowledgement has been given to the risks of misidentification faced by LGBTQ+ communities. Participants felt that gendered assumptions guiding family violence legal system responses placed some participants at increased risk of being listed as a respondent. Specifically, they felt that if they did not fit the stereotype of the passive, submissive, 'damsel in distress' family violence victim, then they were unlikely to be considered a 'real' victim-survivor. For participants listed as respondents, whilst 61 per cent had an interim order made against them, only 28 per cent had a final order made against them. This gives credence to the argument that most participants listed as respondents were indeed misidentified and suggests that magistrates are becoming increasingly adept at recognising and responding to legal systems abuse (Nancarrow et al., 2020).

High rates of privately initiated FVIO applications

The survey data reveals high rates of privately initiated FVIO applications when compared to State-wide statistics (Crime Statistics Agency, 2021). 37 per cent of AFMs applied for an FVIO privately, and 44 per cent of respondents were subject to a private application. Crime Statistics Agency data shows that police initiated approximately 77 per cent of all FVIO applications in Victoria in the year

2020–21. This finding may be explained by LGBTQ+ victim-survivors having less trust in the police than hetero/cisgender victim-survivors and/or that police adopt discriminatory attitudes towards LGBTQ+ communities and are less likely to support FVIO applications protecting them. Participants spoke about the ease with which a perpetrator of family violence can vexatiously initiate a private FVIO application with no police investigation and identified this as a key system shortcoming. Assuming LGBTQ+ perpetrators also harbour a distrust of the police, they may turn to private applications as a way to commit legal systems abuse.

Only 27 per cent of participants had contact with Victoria Police LGBTIQ Liaison Officers (LLOs)

Whilst some participants were aware of LLOs, they faced significant barriers in accessing them. Some had resorted to contacting LLOs via online dating applications. Resourcing constraints mean that specialist officers are often required to engage in general policing duties (RCFV, 2016), and in some instances this may trump their specialist role (Dwyer, 2020). Evidently, resourcing issues within the police create significant barriers in LGBTQ+ victim-survivors' ability to access specialist police services.

41 per cent of participants indicated that they would contact the police for family violence-related matters in the future

Whilst some participants reported positive experiences with the police, the majority of participants reported police dismissing, trivialising and downplaying the violence they were experiencing, and failing to take any action, including referring them to appropriate support services. Further, a number of participants reported experiencing both subtle and overt homophobic and transphobic attitudes from responding police officers. These attitudes impacted the service provided to participants and played a role in whether they were offered protection.

The court process for many participants was experienced as procedurally unfair

Participants reported feeling unheard and invisibilised during court hearings and faced barriers in accessing legal representation. Participants recounted being consistently misgendered, having the magistrate confuse the victim and perpetrator (because they were the same gender), and feeling as though their experiences were trivialised, due to their not conforming to gender normative and heterosexual relationships. Participants who had been listed as respondents reported feeling pressured to consent to the order against them. More positively, participants

who navigated the court process with the support of LGBTIQ Applicant and/or Respondent Practitioners tended to feel seen, heard, and supported in ways they had not experienced prior to being connected with this service.

Barriers to accessing mainstream and specialist family violence services

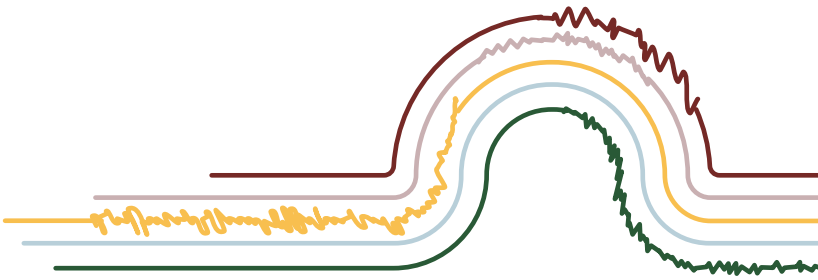
Participants experienced barriers to accessing mainstream family violence services and this was a particularly pertinent issue for male-identifying victim-survivors who felt that there was no space for them in the system. Experiences with specialist LGBTQ+ services were largely positive, but participants viewed these services as being under resourced.

Safety and wellbeing after engagement with the FVIO system was improved for a minority of participants

For some participants, engagement with the FVIO system stopped the violence and gave them some control over the abuse they were experiencing. However, most found the system to be ineffective in improving safety. In large part, this was due to the challenges of having an FVIO enforced and of evidencing breaches. Participants saw the abuse take new forms, such as technology-facilitated family violence; they felt that reporting was futile due to the difficulties of proving these subtle forms of abuse and stalking. The safety and wellbeing of those listed as respondents was also jeopardised, with many reporting life-changing consequences associated with being a victim-survivor labelled as a perpetrator.

A heterosexist and gender-normative system

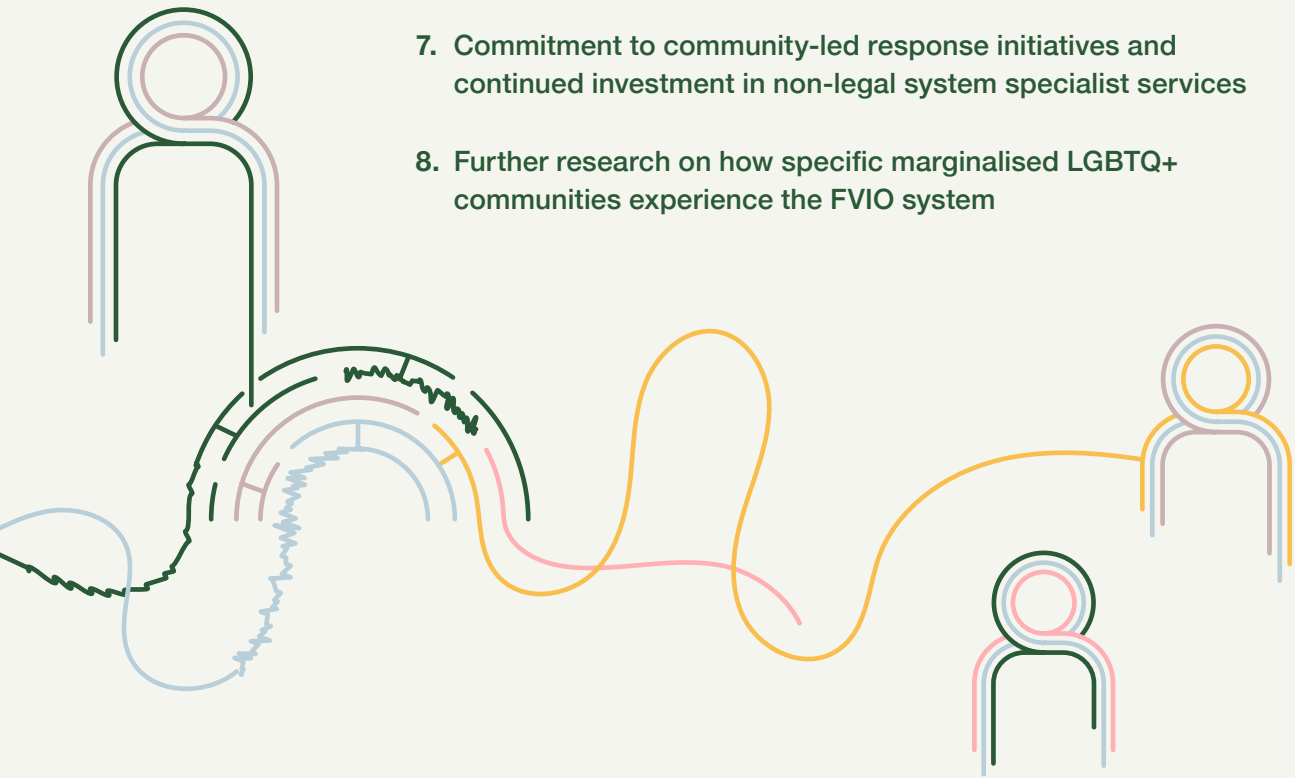
Participants experienced microaggressions targeted at their gender and/or sexual identity at every point of the FVIO process. Whilst participants were empathetic to the plight of cisgender heterosexual women and their need for services, they felt that the system ultimately made no room for LGBTQ+ victim-survivors. The system consistently tried to locate their experiences within a cisgendered and heterosexist framework, which increased risks of misidentification and created additional harms and barriers to engagement. Many participants were of the view that the FVIO system and those working within it do not adequately understand family violence, let alone family violence experienced by LGBTQ+ persons.



3.2 Recommendations

In accordance with the findings, the report makes the following family violence sector recommendations. The recommendations are considered in greater detail in section 12.

1. **Investment in community-controlled LGBTQ+-specific family violence services**
2. **System-wide training on LGBTQ+ family violence**
3. **Increased training for Victoria Police members, greater resource allocation to Victoria Police LGBTQ Liaison Officers (LLOs) and data collection practice reform**
4. **Expand the LGBTIQ Applicant and Respondent Practitioner Service**
5. **Training for court staff, police prosecutors, magistrates and lawyers on the risks of misidentification for LGBTQ+ communities**
6. **Review into the FVIO system application process**
7. **Commitment to community-led response initiatives and continued investment in non-legal system specialist services**
8. **Further research on how specific marginalised LGBTQ+ communities experience the FVIO system**



4 Background

Research suggests that LGBTQ+ people experience family violence at similar if not higher rates than cisgender heterosexual people (Bermea et al., 2019; Guadalupe-Diaz & Jasinski, 2017; Russell & Sturgeon, 2018). However, significant underreporting of family violence by LGBTQ+ people and heterosexist and gender normative measurement tools render it difficult to quantify the exact rates and forms of violence experienced (Dario et al., 2019; Fileborn, 2019; Israel et al., 2016). A recent Australian survey found that six in ten (60.7%) LGBTQ persons have experienced intimate partner violence and 43.2 per cent have experienced family of origin violence (Hill et al., 2020). In this study, non-binary persons, trans men and cisgender women reported the highest rates of intimate partner violence. Looking at sexual identity, persons identifying as queer, pansexual and lesbian reported the highest rates of intimate partner violence (Hill et al., 2020).

There are forms of violence that LGBTQ+ communities share with cisgender heterosexual people, but others are unique to them. LGBTQ+-specific forms of family violence include outing, closeting, and altercasting (Guadalupe-Diaz and Anthony 2017; Whitfield et al. 2018). Also worth noting here are forms of violence unique to trans and gender diverse people, such as having transition-related hormones withheld, being forced to conform to a certain performance of gender, and having prosthetics or clothes hidden or destroyed (Peitzmeier et al. 2019). Hetero/cisnormative fallacies surrounding family violence can, and do, misinform understandings of the issue for LGBTQ+ people (Pertnoy, 2012). Acknowledging the multiple ways LGBTQ+ people experience family violence is crucial to preventing such misunderstanding. Centring the male-perpetrator/female-survivor dynamic is important when explaining and responding to family violence in hetero/gender-normative relationships. But this paradigm contributes to the erasure of LGBTQ+ people in family violence literature, which impedes our understanding of why family violence is so prevalent among LGBTQ+ people. Moreover, it creates inherent barriers to help-seeking and service provision (Cannon & Buttell, 2015; Donovan & Barnes, 2020). Guadalupe-Diaz and Jasinski (2017) highlight the shortcomings of using feminist theory in isolation when assessing and responding to family violence perpetrated against trans and gender diverse people. Misunderstanding family violence as 'solely a consequence of patriarchal power structures' contributes to the erasure of trans and gender diverse people in family violence research and media (Guadalupe-

Diaz & Jasinski, 2017, p. 776). Rather, family violence should be understood as 'a consequence of structurally informed discourses that not only marginalise women but also create distinct realities across race, class, sexual orientation, and gender identity' (Guadalupe-Diaz and Jasinski, 2017, p. 776). With that considered, the role of feminist theory may still be important in understanding family violence in LGBTQ+ relationships, if one assumes that gender relations and patriarchy also permeate these relationships (Andreano, 2020; Donovan & Barnes, 2020b).

LGBTQ+ people generally seek help through informal means, such as friends or family (Messinger, 2017). Formal help-seeking avenues, such as the police or family violence services, are less commonly accessed by LGBTQ+ people (Freeland et al., 2018). Informal help-seeking resources are preferred primarily because hetero/gender-normative discourses of family violence limit the capacity for LGBTQ+ people to recognise themselves as 'legitimate' victim-survivors or perpetrators (Ard & Makadon, 2011; Donovan & Barnes, 2020; Lusby et al. 2022; Turell et al., 2012). It is also reported that informal help-seeking tends to be a positive experience for victim-survivors and that these avenues have assisted them in leaving or recovering from abusive relationships (University of New South Wales, 2014, p. 31). Furthermore, there is a distinct lack of services specifically tailored to LGBTQ+ victim-survivors (Calton et al., 2016; Furman et al., 2017; Tesch & Bekerian, 2015), which is an overt barrier to help-seeking (Hill et al., 2020; Leonard et al., 2008; Lay, 2017; University of New South Wales, 2014).

The formal help-seeking resources most commonly accessed by LGBTQ+ people are counsellors and associated mental health professionals such as psychologists, psychiatrists, and social workers (see Santoniccolo et al., 2021). Although these valuable resources can provide more substantial support than informal help-seeking resources, they too are limited in both the form and extent of that support. Police, and organisations that deal primarily with family violence victim-survivors (such as shelters) are reported to be the least accessed help-providing resources among LGBTQ+ family violence victim survivors: between only 1% and 20% of participants from a range of studies sought help from these facilities (see Messinger, 2017; Santoniccolo et al., 2021). This is in stark contrast to help-seeking behaviours of cisgender heterosexual victim-survivors. Meyer (2010) notes that informal help-seeking resources are also commonly accessed by cisgender heterosexual victim-survivors, yet they are often sought in addition to formal help-providing services, rather than as an alternative. In Private Lives 3 (Hill et al. 2020, p. 75), an unprecedented glimpse into the lives of LGBTQ+ Australians, 35% of participants reported wanting better access to

LGBTQ+-inclusive family violence organisations, whilst 20% emphasised the need to establish more LGBTQ+-specific family violence organisations. This again suggests that when seeking help, LGBTQ+ victim-survivors see value in resources tailored to the unique nuances of LGBTQ+ family violence.

Of particular importance to this project is the extremely scarce research into the experiences of LGBTQ+ people who access civil intervention orders. Due to the difficulty in recruiting LGBTQ+ people for research, and the low numbers of those who formally report their experiences, conclusive statistics on how many LGBTQ+ people access intervention orders are limited – so too is an understanding of how helpful and supportive this help-seeking process is for those victim-survivors (Donovan and Barnes 2020). Of research that has explored these experiences, a core theme is the risk of LGBTQ+ victim-survivors being listed as respondents on intervention orders – either where they have been misidentified as the predominant aggressor, or where an assumption of mutual abuse has been made resulting in mutual orders (Amnesty International, 2005; Andreano, 2020; National Coalition of Anti-Violence Programs [NCAVP], 2009). US-based research has found that same-gender couples experience dual arrest and mutual intervention orders at rates 30 times those of hetero-cisgender women (for discussion, see Andreano, 2020). These findings suggest that police responding to same-gender couples face additional challenges in correctly identifying the predominant aggressor; they may be more likely to 'fill the gaps using harmful stereotypes and narratives about who can be a victim of domestic violence' (Andreano, 2020, p. 1047). Transgender victim-survivors face a unique risk of being incorrectly labelled the perpetrator, due to assumptions and stereotypes about trans persons being 'deviant' and/or 'mentally ill' (Amnesty International, 2005, p. 127). The use of mutual orders serves to perpetuate 'a cycle of criminalization of LGBT victims, [reinforcing] negative stereotypes, and disproportionately [limiting] the freedoms of queer victims' (Andreano, 2020, p. 1053).

It is important to contextualise the help-seeking behaviours of LGBTQ+ victim-survivors within the nuanced history these communities share with organisations such as the police. Most research maintains that LGBTQ+ people do not trust police officers to respond to their needs appropriately, sensitively, or with adequate knowledge of LGBTQ+-specific issues (Victorian Pride Lobby, 2021; Dario et al., 2019; Fileborn, 2019; Israel et al., 2016; Kurdyla et al., 2021; Leonard & Fileborn, 2018; Miles-Johnson & Pickering, 2018). This relationship of distrust is informed by personal interactions with police, but it also stems from LGBTQ+ people sharing with one another their experiences with law enforcement (Antrobus et al., 2015; Meyer, 2019; Murphy & Cherney, 2017; Rosenbaum et al.,

2005; Rosenbaum et al., 2015). The relationship between LGBTQ+ communities and the police in Australia is contextualised by international queer liberation movements, such as the Stonewall riots (Dwyer & Tomsen, 2016; Fileborn, 2019; Owen et al., 2018; Russell, 2015) and Australian events like the Bondi Beach beat murders, the Tasty Nightclub raid, the Hares and Hyenas bookshop raid (Russell, 2015; Vedelago, 2020), and more recently, the outing of Dani Laidley while in police custody (Victorian Pride Lobby, 2021). Despite efforts by Victoria Police to improve the relationship between LGBTQ+ people and the police – through the introduction of LGBTIQ Liaison Officers (LLOs) and several formal apologies, for example – the conduct of Victoria Police officers has routinely diminished the trust LGBTQ+ people place in law enforcement (Victorian Pride Lobby, 2021). Fears of uninformed or discriminatory responses from police officers often result in reluctance by LGBTQ+ people to report their experiences to police (Victorian Pride Lobby, 2021; Wolff & Cokely, 2007; Dwyer & Tomsen, 2016). This distrust may be exacerbated for persons from additionally marginalised groups, such as people of colour, who have their own long history of police discrimination and violence (Guadalupe-Diaz & Jasinski, 2017), or migrant and refugee persons who may fear that formal reporting may result in deportation (Ussher et al. 2020).

Another barrier to formal help-seeking faced by LGBTQ+ people is the fear that disclosing abusive behaviours between LGBTQ+ people will legitimise stereotypes involving criminal and deviant LGBTQ+ identities, which have historically been used to discriminate against LGBTQ+ people (Langenderfer-Magruder et al., 2014; Calton et al., 2016, p. 585; Dwyer, 2014). Half of the participants in the Coming Forward Report (Leonard et al., 2008, p. 38) did not report their most recent experience of abuse, citing 'heterosexism and the actuality or fear of further discrimination and abuse', as the main deterrents to formal help-seeking. Of particular concern, only 38–40% of participants reported being satisfied with the response by Victoria Police, compared to the roughly 60% that reported being satisfied by New South Wales Police responses (Leonard et al., 2008). According to Coming Forward (Leonard et al., 2008, p. 42), these statistics suggest that when responding to LGBTQ+ victim-survivors, Victoria Police officers may be realising the very concerns LGBTQ+ people report: heterosexism, dismissal, and insensitivity to LGBTQ+ people's needs. This highlights the importance of taking a historically informed approach to providing support to LGBTQ+ communities. Recognising the nuanced interplay between historically homo/transphobic social, institutional, and professional responses to queer people seeking help is imperative to fostering a sense of safety in those reporting instances of family violence – and to dismantling 'pejorative and discriminatory stereotypes directed at relationships within LGBTQ communities' (p. 60).

Although the body of literature is growing, there is limited research into the drivers of family violence in LGBTQ+ relationships and the most appropriate responses to it. Research into LGBTQ+ victim-survivors' help-seeking behaviours is also growing, but understanding of how LGBTQ+ people experience the family violence legal system – when they choose to formally report their experiences – remains limited. This is due in part to the poor relationship between LGBTQ+ people and those bodies constituting formal help-seeking resources, but difficulty in recruiting LGBTQ+ for academic research also plays its role (Ard & Makadon, 2011; Baker et al., 2012; Langenderfer-Magruder et al., 2014). There is limited research, both internationally and in Australia, into the experiences of LGBTQ+ people engaging with intervention order systems (cf. Andreano, 2020). To construct a full picture of LGBTQ+ victim-survivor help-seeking, we need to know why LGBTQ+ people access intervention orders, and we need to know what their experiences are like when they do.

4.1 Intersectionality

Drawing on Hillary Potter's (2015, p. 3) definition, 'intersectionality' or 'intersectional' refers to 'the concept or conceptualization that each person has an assortment of coalesced socially constructed identities that are ordered into an inequitable social stratum'. A person's experiences of the world are shaped by a number of identities and experiences, reflective of broader societal structures of privilege and oppression. For LGBTQ+ persons, their gender and/or sexual identity is not all that defines them, and it is important to consider their experiences holistically and individually. LGBTQ+ persons from multiply marginalised backgrounds face exacerbated risks of family violence and unique barriers to help-seeking (Carman et al., 2020; McCown & Platt, 2021). As minority stress theory hypothesises, identifying as non-heterosexual and/or non-gender conforming creates external and internal stresses that contribute to family violence victimisation and perpetration (Balsam & Syzmanski, 2005). Where a person sits at the intersections of additional points of marginalisation, such as racial marginalisation, these stresses may be further exacerbated and shape that person's experiences of victimisation and/or perpetration in unique ways. A key characteristic of LGBTQ+ family violence is identity abuse, which Donovan and Barnes (2020b, p. 16) define as stereotypical tropes that 'can be used by abusive partners to control, punish, torment and/or deter help seeking'. Whilst such stereotypes may be used to target a person's gender and/or sexual identity, perpetrators may also target the victim-survivors 'race', ethnicity, disability, class, age, and/or religion to denigrate and control the victim-survivor.

A number of studies have considered the role of race and ethnicity in the lives of LGBTQ+ victim-survivors, finding that rates of family violence, including family of origin violence, are higher amongst people of colour when compared to white/ Caucasian victim-survivors (McCown & Platt, 2021). Disability also plays a key role in experiences of family violence – LGBTQ+ persons with disability are at a heightened risk of experiencing family violence, but also have to contend with formal systems' denial and attempted suppression of disabled persons' sexual identities (see, Lund, 2021). Migrant and refugee victim-survivors have also been identified as a particularly vulnerable group within LGBTQ+ communities, and the recent Pride in Prevention guide (Carmen et al., 2020) emphasised the need to consider the role of migration status, pre-arrival trauma and migration trauma in responding to migrant and/or refugee LGBTQ+ persons.

Multiple sources of marginalisation (and therefore discrimination) render decisions about help-seeking complex. In particular, increased marginalisation may disincentivise victim-survivors' from seeking help, for varying reasons. For example, Aboriginal and Torres Strait Islander sistergirls, brotherboys and other LGBTQ+ individuals may be reluctant to report due to concerns about contributing to the over-incarceration of Indigenous persons within the criminal legal system, and may also fear being misidentified as the predominant aggressor due to negative racial biases held by the police (Lusby et al., 2022). Migrant and refugee victim-survivors may fear that reporting the violence will jeoporadise their visa status – a fear that perpetrators often perpetuate and weaponise (Segrave, 2017; Ussher et al. 2020). LGBTQ+ victim-survivors who do formally report family violence commonly face the challenge of choosing between accessing mainstream services that are unlikely to offer any form of specialisation, or specialist services, that are likely to only offer specialisation in one area. This means that, for example, an LGBTQ+ Aboriginal and/or Torres Strait Islander person may be forced to choose between queer-services or culturally safe Aboriginal services, with no guarantee that one will cater to the other source of marginalisation (Lusby et al. 2022). Indeed, LGBTQ+ victim-survivors often feel 'forced to compartmentalise their identities' in the process of help-seeking (Lusby et al., 2022, p. 44). Formal services may also be physically inaccessible for some victim-survivors, such as those living with disability and those in regional, rural and remote areas (Worrell et al. 2022). The latter are forced to contend both with the 'intimacy' and what can best be described as the 'small mindedness' of many small towns. There may be a lack of services available and any engagement with services requires victim-survivors' to 'come out' to persons' whom they likely know from the broader community (Worrell et al. 2022). Thus, the freedoms of anonymity that victim-survivors may experience in larger cities are unlikely to

be available to those in regional, rural and remote areas. It is also important to recognise that whilst LGBTQ+ communities generally have a distrust of the criminal legal system and particularly the police (Dario et al., 2019), this distrust may be heightened for multiply marginalised communities. Amnesty International (2005) found that in the United States, transgender individuals, people of colour, youth, immigrant individuals, homeless individuals and sex workers were, within LGBTQ+ communities, at the highest risk of experiencing human rights abuses at the hands of the police – problematic treatment of LGBTQ+ communities by the police also permeates their responses to family violence.

Victim-survivors' from multiply marginalised backgrounds may also encounter unique challenges in accessing informal support, such as that which comes from friends and family. LGBTQ+ people of colour, for example, may experience racial discrimination from LGBTQ+ communities but also experience rejection from their families due to their gender and/or sexual identity (Horner, 2013). This might be particularly relevant for persons from religious family backgrounds, where conservative religious views are adopted by their family of origin. Aboriginal and Torres Strait Islander victim-survivors have reported being rejected from LGBTQ+ communities due to racism and therefore choosing to rely on family for support, however, this may require them to hide their gender and/or sexual identity in the process – which has negative mental health impacts (Lusby et al. 2022). It is also important to note here that bisexual and inter-sex individuals face unique barriers in accessing support due to the invisibilisation of both identities within and outside of LGBTQ+ communities (Bermea, van Eeden-Moorefield & Khaw, 2019; Khanna, 2021).

The present study was supported by a small-scale internal funding grant and was therefore limited in its scope. The core lens in which we present participant experiences is through their diverse sexual and/or gender identities. Of course, participants had intersecting identities and sources of marginalisation and discrimination in their lives, and we have highlighted these experiences where participants raised them in the survey and/or interviews. However, the experiences described above were not discussed in great detail by participants and we were unable to provide in-depth analysis into the unique experiences of particular groups. As the first in-depth study into LGBTQ+ engagement into intervention order systems in Australia, we hope that this research serves as an important platform for further research and that such research is able to better interrogate the complex lived experiences of LGBTQ+ victim-survivors.

4.2 The Victorian legal and policy context

The Victorian legal response to family violence is governed by the Family Violence Protection Act 2008. Within this legislation (s5), family violence is defined as:

(a) behaviour by a person towards a family member of that person if that behaviour-
  (i) is physically or sexually abusive; or
  (ii) is emotionally or psychologically abusive; or
  (iii) is economically abusive; or
  (iv) is threatening; or
  (v) is coercive; or
  (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

A 'family member' (s8) is defined as:

(a) a person who is, or has been, the relevant person's spouse or domestic partner; or
(b) a person who has, or has had, an intimate personal relationship with the relevant person; or
(c) a person who is, or has been, a relative of the relevant person; or
(d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or
(e) a child of a person who has, or has had, an intimate personal relationship with the relevant person.

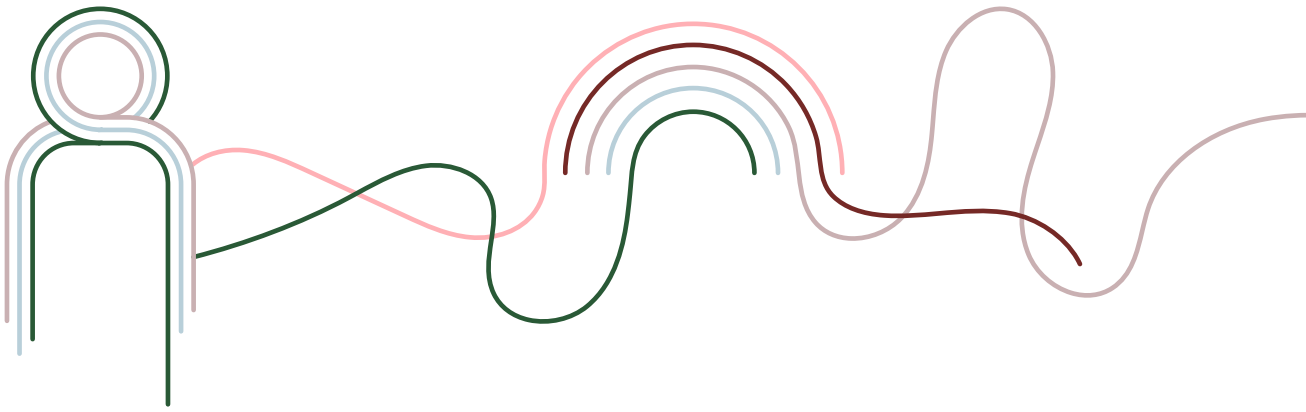
These definitions are inclusive of LGBTQ+ relationships, and s7 offers a specific LGBTQ+ example of emotional abuse – 'threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes'.

A person experiencing family violence can apply for a family violence intervention order (FVIO), and a final order may be granted 'if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to continue to do so or do so again' (s74(1)), or where the respondent consents to the order (s78). The breach

of a family violence safety notice (a temporary order which acts as an application for a final order), an interim order, and/or a final order is a criminal offence.

Australia is unique among international jurisdictions such as the United States and the United Kingdom in an important way: while a person can apply for an order privately through the courts, the majority of FVIO applications are police-initiated. In Victoria in the year 2020–21, 77 per cent of all applications were initiated by the police, who act as a third-party applicant (Crime Statistics Agency, 2021). Due to the criminal charges that can result from a breach, civil intervention orders are frequently referred to as existing within a quasi-criminal legal system – in no place is this more true than Australia, where the police act as gatekeepers to the system.

Police decision-making is largely guided by the Victoria Police Code of Practice for the Investigation of Family Violence and the 'Options Model'. Under the Options Model, when responding to a family violence incident, police are to determine whether: criminal charges should be laid against the perpetrator, an FVIO application should be initiated, and/or a referral (formal or informal) to appropriate services should be made. Police may utilise any combination of options they deem appropriate, and decisions are based on assessment of risk per the Family Violence Report. FVIOs form a significant arm of the legal response to family violence in Victoria, and in the year 2020–21 the Magistrate's Court received 41,512 applications – of these, approximately 77 per cent resulted in final orders (Crime Statistics Agency, 2021). There is currently no data available as to how many applications involve LGBTQ+ affected family members and/or respondents and police are not required to record this data, although the Victorian Royal Commission into Family Violence ([RCFV], 2016) revealed that in the year 2013¬–14, 741 out of 65,154 recorded family violence incidents involved same-gender relationships. These statistics do not capture the experiences of LGBTQ+ people in opposite-sex relationships.



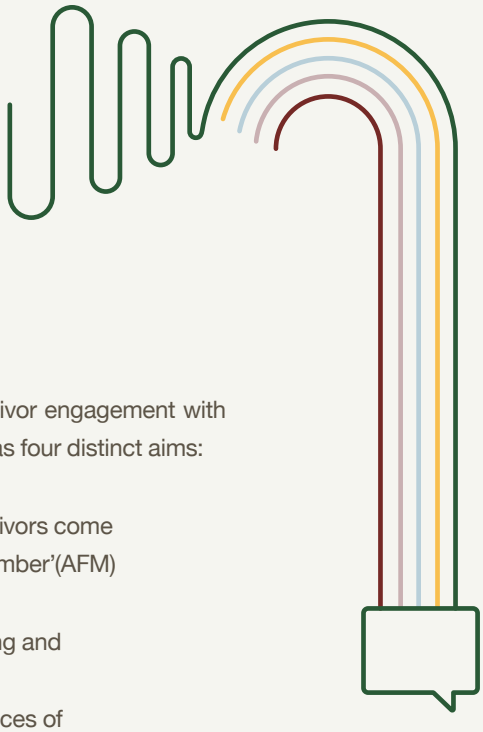
4.2.1 THE VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

In 2016, the Victorian Royal Commission into Family Violence (RCFV) released its findings and highlighted the ways the State was failing in its response to family violence. The report made 227 recommendations for systemic change. The RCFV identified LGBTQ+ Victorians as a group at particular risk of family violence – and as a group that faces significant barriers to obtaining access to support and safety. Specifically, the report found that LGBTQ+ victim-survivors experience unique barriers to reporting to the police and to accessing mainstream services, particularly emergency accommodation services. Additionally, LGBTQ+ victim-survivors find the system to be culturally unsafe; they find themselves frequently being forced to explain their sexuality and gender identity and having their experiences of family violence trivialised. Four recommendations (see Recommendations 166–169) specifically pertained to LGBTQ+ communities; they included (but were not limited to) recommendations for the identification of research priorities, the development of LGBTQ+-specific legal and other resources, primary prevention and response campaigns, service-wide training, amendments to the Equal Opportunity Act 2010 (Vic), and sector-wide Rainbow Tick accreditation. These recommendations have now all been acquitted.

The RCFV, however, offered minimal insight into how LGBTQ+ victim-survivors actually use the family violence legal system – including the FVIO system. Simultaneously, little consideration was given to how the FVIO system might be experienced specifically by LGBTQ+ victim-survivors. Further, the RCFV acknowledged the issue of victim-survivors being misidentified as predominant aggressors within its report. The report presented this as an issue experienced by women victim-survivors, also acknowledging the particular risks of misidentification for women with disability, First Nations women and women from migrant and refugee backgrounds. Despite the report's outlining the complex relationship between the LGBTQ+ community and Victoria Police – and how it acts as a barrier to reporting and continues to result in discriminatory responses from the police – no consideration was given to how these same factors may increase LGBTQ+ victim-survivors' risk of misidentification.

Within this report, we attempt to bridge this gap by exploring how and why LGBTQ+ people come into contact with the FVIO system, safety outcomes during and after engagement, and how LGBTQ+ victim-survivors experience being listed as respondents/perpetrators on FVIO applications and orders.

5 Methods



5.1 Research design

This project presents unique insight into LGBTQ+ victim-survivor engagement with Victoria's family violence intervention order (FVIO) system. It has four distinct aims:

- To document the circumstances in which LGBTQ+ victim-survivors come to be engaged with the FVIO system as an 'affected family member'(AFM) and/or a 'respondent'.
- To document LGBTQ+ victim-survivors' safety outcomes during and after engagement with the FVIO system.
- To provide new insight into LGBTQ+ victim-survivors' experiences of being misidentified as predominant aggressors in the FVIO system.
- To make policy and practice recommendations to improve service system responses to LGBTQ+ family violence.

The project was undertaken in partnership with the LGBTIQ Legal Service and Southside Justice (formerly St Kilda Legal Service). It was funded internally by the Monash Gender and Family Violence Prevention Centre and the Victorian Higher Education State Investment Fund (VHESIF). Ethics approval was obtained from the Monash University Human Research Ethics Committee (MURHEC) in April 2022 (project no. 32169).

The study collected data from three sources. In phase 1 of data collection, LGBTQ+ family violence victim-survivors who had engaged with the FVIO system were invited to share their experiences in an anonymous online Qualtrics survey (see Appendix 1). Eligible participants identified as LGBTQ+; they were victim-survivors of family violence, were 18 years or older, and had experienced the FVIO system as an affected family member and/or a respondent. The survey asked a range of closed and open-ended questions about participant demographics, about how participants came to be engaged with the FVIO system, and about specific experiences with the courts and service providers. The survey was advertised widely on social media and through family violence sector channels. In total, the survey garnered 41 responses. Survey participants were invited to provide their contact information to participate in a follow-up interview with the lead researcher – phase 2 of data collection.

For phases 1 and 2 of data collection, participants were also directly recruited from the LGBTIQ Legal Service and their client list. Clients were contacted by an employee of the LGBTIQ Legal Service and given information about the project. Those interested in participating completed a consent form including their contact details, which was then forwarded to the Monash research team. LGBTIQ Legal Service clients were given the option to participate in the survey, be interviewed and/or to have their de-identified court documents provided to the research team for analysis – phase 3. It should be noted that court documents provided for phase 3 of the project are not included in this report, due to the low number of participants who opted to do this.

In phase 2 of the research, 21 LGBTQ+ victim-survivors participated in a one-on-one, in-depth interview (see Appendix 1), which allowed them to expand on responses offered in the survey. Participants could opt to do this interview in-person, over the phone, or online (e.g., Zoom). Participant consent was obtained at the commencement of the interview. Participants were given the opportunity to ask questions about what consenting to the study meant and were permitted to have a support person present. The interviewer first asked if the participant was in a safe environment, where they felt they could speak freely. In the event that this was not the case, the interviewer offered to reschedule. Interviewers emphasised to participants that they could stop or take a break from the interview at any time. All participants were remunerated for their time with a $50 Coles gift card.

5.2 Presentation of participant data

Chapter 6 of this report presents key demographic information of survey participants. Additionally, qualitative comments from survey participants are embedded throughout the findings (Chapters 7–11) of the report.

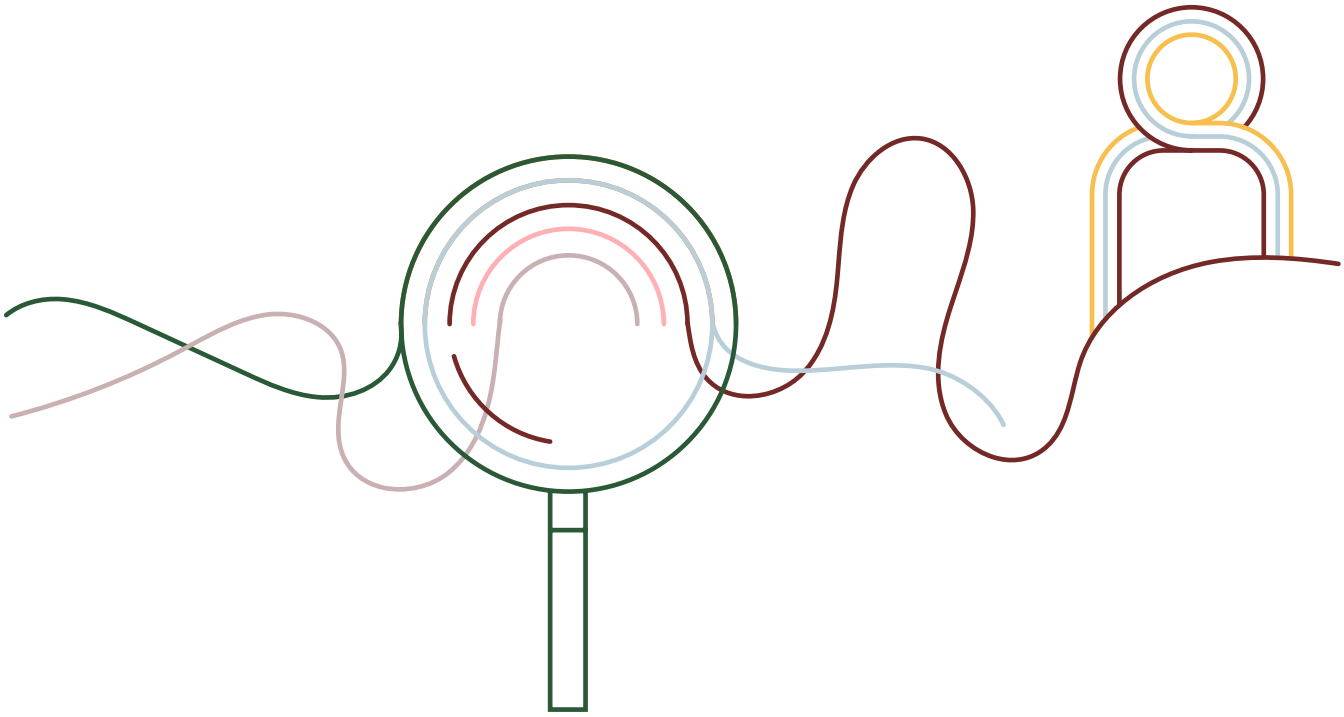
The report predominantly draws on the qualitative interview data collected in phase 2 of the research. When participants are quoted, we have included their gender and sexual identity, to provide greater context for their experiences. This is accompanied by the pseudonym that they selected for themselves – no real names are used in the report. Participants were also asked for their pronouns, and these are used accordingly. All names, locations and any other information that may compromise participant anonymity has been redacted. As Chapter 6 provides an overview of survey participant demographics, and interview participants were largely drawn from this sample (although some participants did partake in an interview but not the survey), we have not included a demographic breakdown of interview participants.

5.3 Data analysis

Quantitative survey data was extracted from the Qualtrics analysis function and is presented in Chapter 6. We note that the small size of the survey sample (n=41) presents limitations to what can be concluded from the quantitative data. We present this data as an overview of who was involved in the research and what their experiences were, but we are unable to draw larger conclusions about FVIO system engagement. The findings nevertheless provide an important prompt for further quantitative research.

Qualitative survey data and interview data were thematically analysed using NVivo data analysis software. Pre-determined codes were first developed that largely align with the findings presented in Chapters 7 to 11, however, the research team also allowed for a grounded approach – with codes developed as unanticipated themes emerged in the data (Braun & Clarke, 2006).

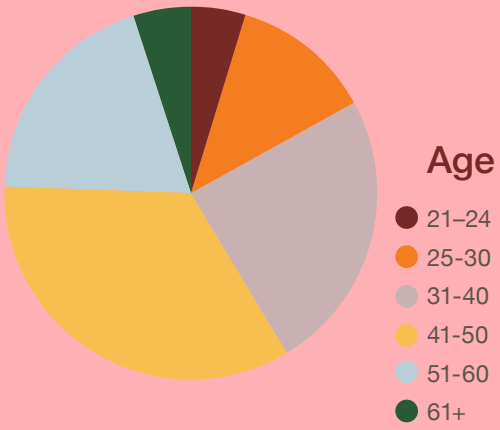
This report deliberately draws heavily on participant quotes. It was our wish to avoid over-interpreting participant experiences, which can result in data being taken out of its original context. We therefore attempt to present participant experiences as they were told to us.

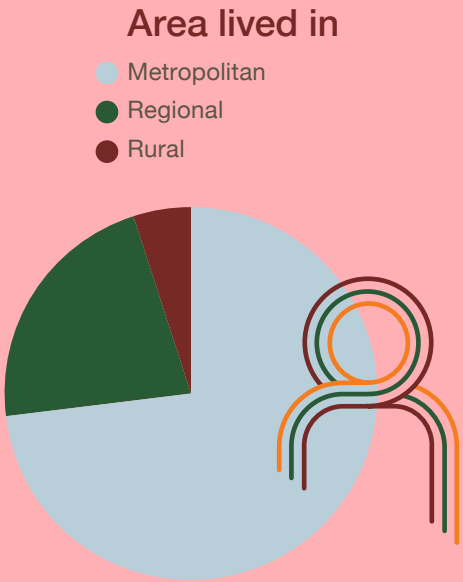


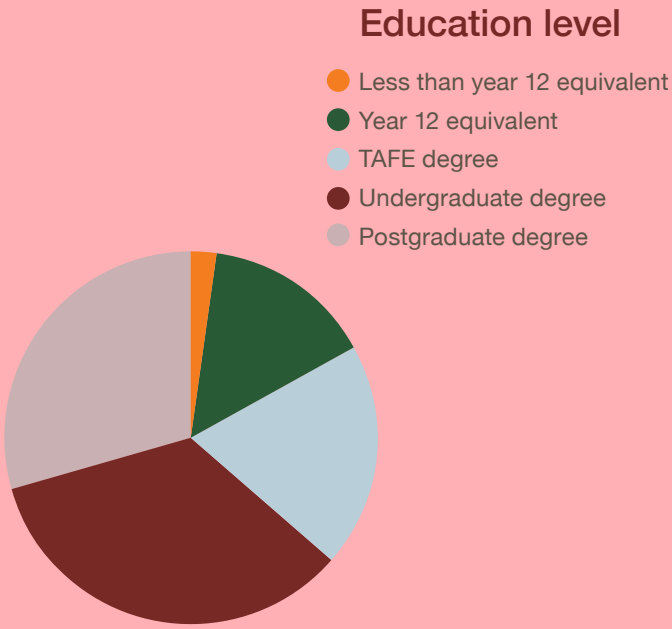
6 Quantitative survey results

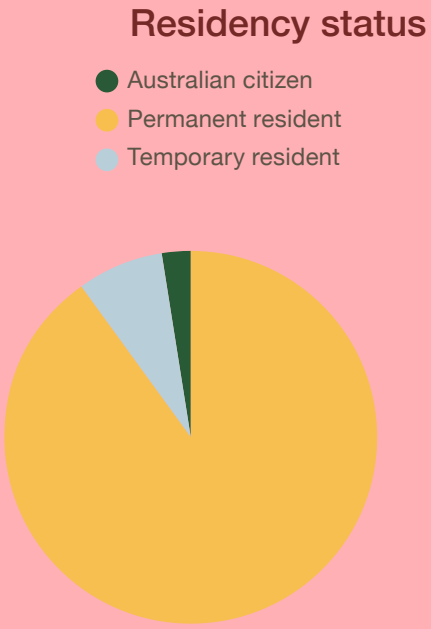
The survey component of this project yielded important qualitative and quantitative data on LGBTQ+ victim-survivors experiences with the FVIO system. In this section of the report, we draw on the quantitative results of the survey, beginning with participant demographics and moving on to specific FVIO system experiences. It is important to preface this discussion by emphasising that the survey sample is small (n= 41), and size and recruitment methods mean that the findings are not generalisable. Indeed, whilst the survey did have quantitative components, this project was intended to employ primarily qualitative methods. However, given the lack of data on how LGBTQ+ family violence victim-survivors engage with intervention order systems in Australia and internationally, the findings presented here serve as an important prompt for robust quantitative research on this topic.

The significant majority of participants were over the age of 30 (82%), lived in a metropolitan area (73%), were Australian citizens (90%), and had a high level of education, with 63.5 per cent reporting having an undergraduate degree or postgraduate degree.









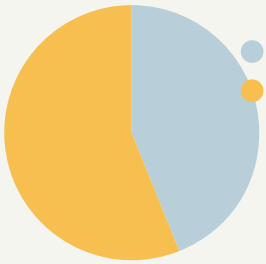
24% of participants identified as living with disability

Approximately one quarter of the sample (24%) identified as having disability, which is above the nationally estimated rates of disability (one in six Australians) (Australian Institute of Health and Welfare, 2022). Only two (5%) participants in this study identified as Aboriginal. We recognise that LGBTQ+ First Nations persons are a particularly at-risk group in relation to experiencing family violence and encountering barriers to engaging with the legal system (Australian Human Rights Commission, 2015) and their relative absence from the study is a limitation. We emphasise here that the lack of First Nations participants is reflective of barriers in accessing these populations for research, not of their absence from this system or of their risk of experiencing misidentification or legal systems abuse. There is an urgent need for further research that explores LGBTQ+ First Nations persons experiences with intervention order systems.

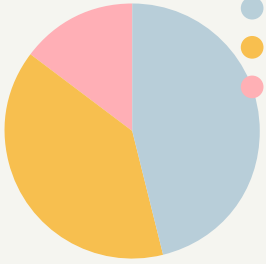
5% of participants identified as Aboriginal and/or Torres Strait Islander

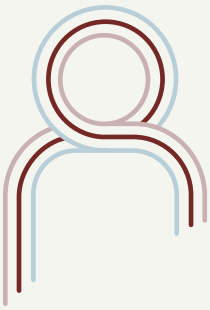
Gender and sexual identity were recorded in accordance with the Australian Bureau of Statistics (ABS) Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables. The discrepancies shown between sex recorded at birth and gender identity reveal that a number of participants identified as a gender different to that recorded at their birth. One participant was recorded as female at birth and identifies as a man. Fourteen per cent of participants identified as non-binary – all of these participants were recorded as female at birth. No participants identified as intersex. Whilst one participant indicated that they 'don't know' if they have a variation of sex characteristics, we have made the assumption that this participant is unlikely to have a variation of sex characteristics. A significant majority of participants (67%) identified as either gay or lesbian, and a further 21 per cent stated that they use a different term. Within this, seven participants identified as queer, one as polysexual and one as pansexual. Seven per cent of participants identified as bisexual and one participant (2%) identified as heterosexual.

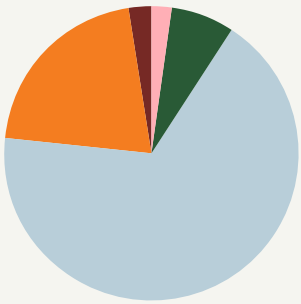
Sex recorded at birth



Gender

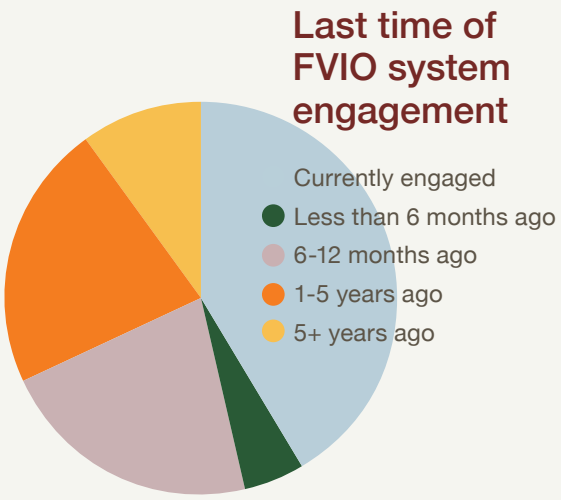






Sexual Orientation

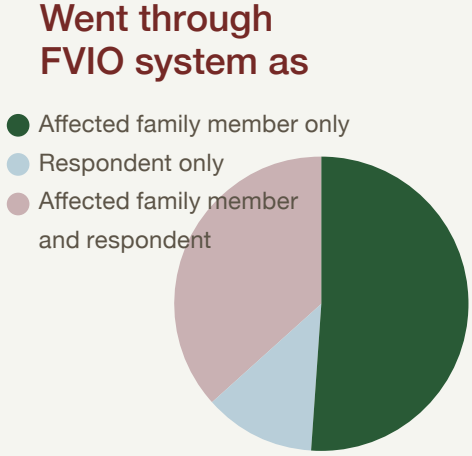
- Heterosexual
- Bisexual
- Gay or lesbian
- A different term
- Don't know



6.1 System engagement

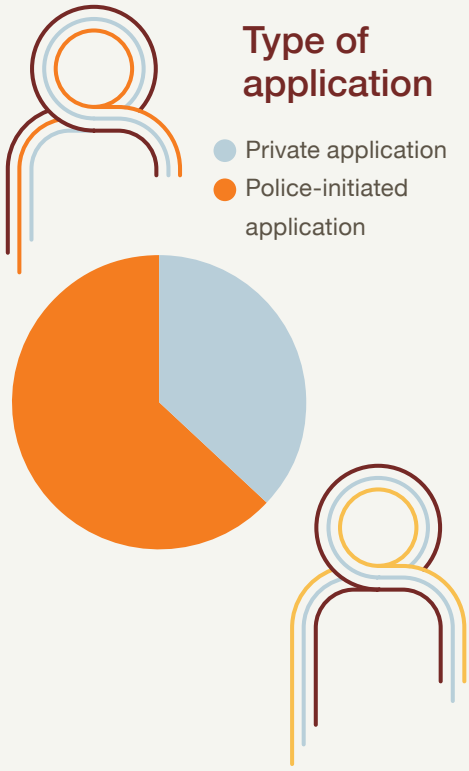
The majority of participants (68%) had engaged with the FVIO system in the last 12 months. At the time of participation, 41.5 per cent were engaged with the system.

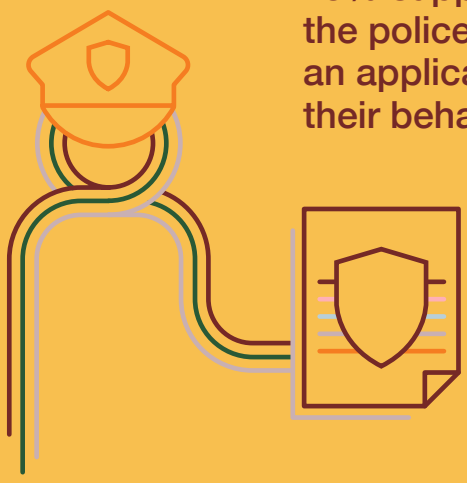
Despite the survey being targeted at LGBTQ+ people who identify as victim-survivors of family violence, only 51 per cent reported being listed as only an AFM on an FVIO application/order. Significantly, most participants who had been listed as a respondent also reported being listed as an AFM (37%). The qualitative data draws these experiences out, highlighting instances of participants being subject to a retaliatory order once they had sought help for themselves, or conversely being the second party to apply for an order after their abuser has vexatiously sought one against them. The findings suggest that legal systems abuse through the FVIO system shaped a significant number of participants' experiences. There has been minimal research on legal systems abuse within LGBTQ+ relationships to date.



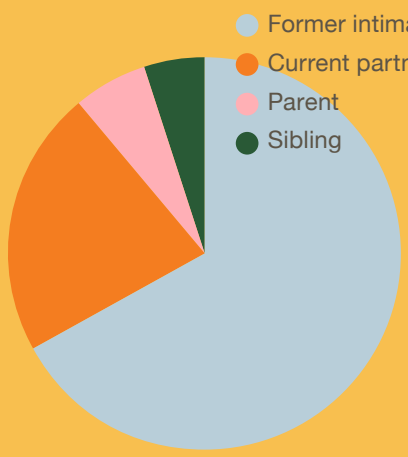
6.2 Affected family member experiences

Of participants who had been listed as AFMs (including those also listed as respondents), the majority of applications were police-initiated, although fewer applications were police-initiated than the proportion of police-initiated FVIO applications across the State (77%) (Crime Statistics Agency, 2021). 73 per cent of AFMs were in support of the police-initiated application.





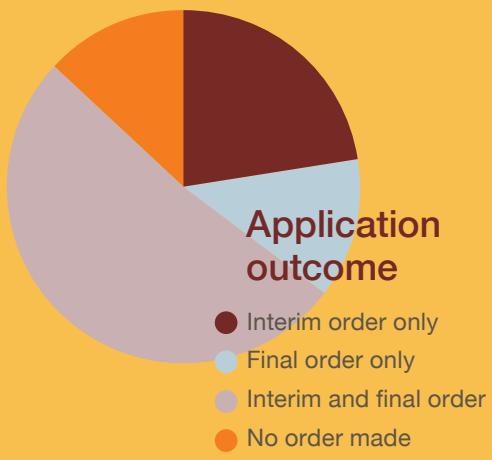
73% supported the police making an application on their behalf

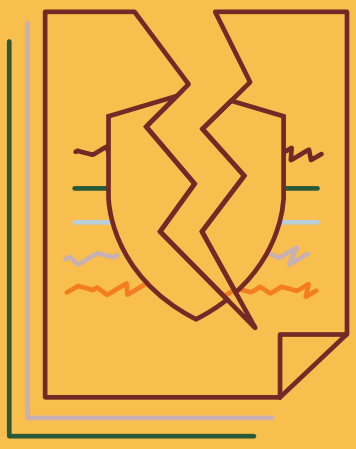


The person they were seeking protection from (or from whom the police were seeking their protection on their behalf) was a current or former intimate partner in 89 per of cases. It should be noted that a smaller number of participants answered this question, and through interviews it became apparent that family of origin violence was more prevalent than presented here.

For AFMs, an interim and final FVIO were granted by the courts in the majority of cases (52%). An interim order alone was made in 23 per cent of cases. (It should be noted, however, that some participants may have been awaiting a decision on a final order). A final order being made without an interim order only occurred in 13% of cases. This number was the same for instances where neither an interim nor a final order was made. This may have been due to respondent or police withdrawal of the application, or the matter being struck out by the magistrate.

For participants listed as AFMs who had final orders made, 70 per cent cited the respondent breaching the order.

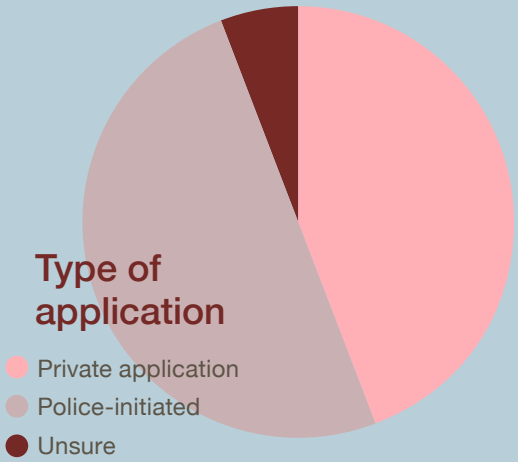




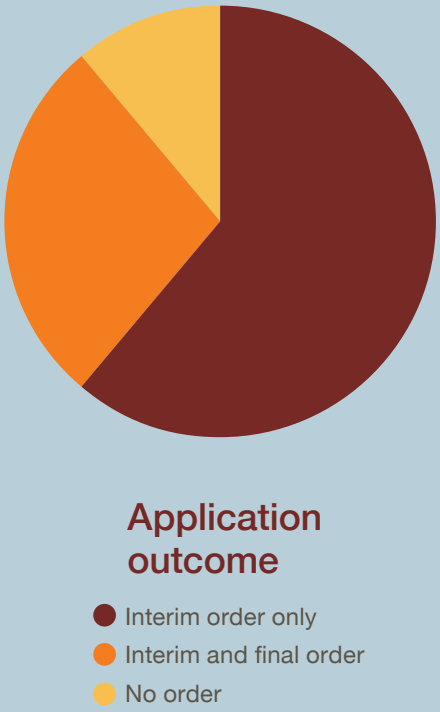
70% stated that the perpetrator had breached the order

6.3 Respondent experiences

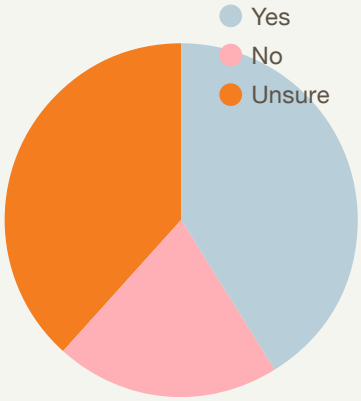
Half of the participants listed as respondents (including those also listed as AFMs) were subject to police-initiated orders. This finding suggests that whilst police misidentification may be an issue, LGBTQ+ victim-survivors' being listed as respondents is also something occurring in private applications.



An important finding was that whilst most 'respondents' were subject to an interim order (61%), only 28 per cent had a final order made against them. One interpretation of this finding is that the courts may have been adopting risk-averse practices in granting an interim order – but upon further investigation and the possible testing of evidence, the application did not result in a further order. This lends itself to the conclusion that participants in the study who were listed as respondents were indeed the primary victim-survivor in their relationship with the AFM, and that the order was vexatious. It further suggests that the courts may be appropriately responding to legal systems abuse.



Willingness to contact police for family violence in the future



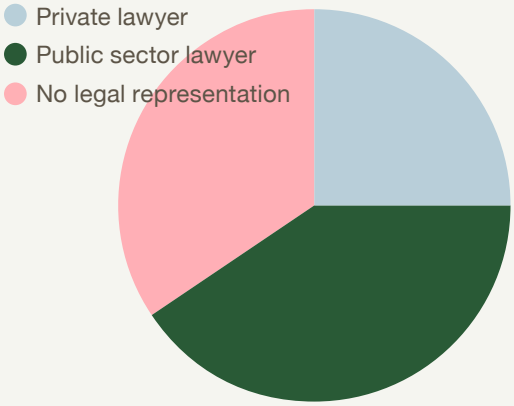
6.4 Broad service engagement experiences

Participants were asked how likely they would be to contact the police in the future for protection from family violence, and 41 per cent indicated that they would. Whilst 21 per cent indicated that they would not be willing to contact the police in the future, a significant number of participants (38%) were unsure.

Concerningly, only 27% of participants had had contact with a Victoria Police LGBTIQ+ Liaison Officer (LLO). Previous research has documented that LGBTQ+ awareness of LLOs is often higher than their level of interaction with them – demonstrating a gap between awareness and access (Dwyer et al., 2017). Despite low access rates, many participants stated that they would have valued the additional specialist support and guidance through the legal process.

Only 27% of participants had access to an LLO

Legal representation



Also of concern, 34 per cent of participants had no access to legal representation. A further 41 per cent used a publicly funded and/or community lawyer, and 25 per cent a private lawyer. As the interviews revealed, many participants felt their economic means rendered them ineligible for legal aid – but falling well short of being able to afford a private lawyer, they attended court unrepresented.

7 Context of participant engagement with the family violence intervention order system

7.1 Affected family members' reasons for seeking a family violence intervention order

Survey and interview participants were asked how they came to be involved with the FVIO system. Unsurprisingly, many of those who initially engaged as affected family members (AFMs) cited experiences of family violence as the reason for seeking protection and stopping the abuse as the intended outcome. Particulars of the violence experienced, however, and the ways in which it informed legal help-seeking, took a number of different forms. The family violence most of the participants experienced came from a former intimate partner, and it occurred within the context of separation. Oisin described some of the behaviours he was experiencing from his male ex-partner that led to him seeking protection:

> *The behaviours were, at that time, just constant harassment, messaged me multiple times repeatedly wanting answers for things … Shouting at me in front of the children, messaging me asking me who was I seeing and basically isolating me. I had to tell this person if I was seeing anyone. I had to let them know all my details. Basically, have access to my whole life, especially with the children … There was just a new level of control, so I had to do something.* (OISIN, MAN, QUEER)

Oisin's experiences speak to what is known about the perpetration of coercive control, a form of family violence employed by an abuser to control their victim 'by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control' (Stark, 2007, p. 5). Whilst this concept is understood largely to be something that men do to women in heterosexual relationships, emerging research demonstrates that it also occurs in queer

relationships (Donovan & Barnes, 2020; Frankland & Brown, 2013; Reeves et al., 2021). Rose, who experienced family violence from her ex-husband (a prior heterosexual relationship), details a similar account, drawing on themes of surveillance and public humiliation:

> *… he knew where I lived, and … where my mail was getting sent to at my old place, he'd hang on to it as well, and he'd open it and then he'd readdress it, put it back in the envelope and send it on here … he'd yell out of the car window in a public place calling me like, 'fucking whore', and all this sort of stuff.* (ROSE, WOMAN, LESBIAN)

Michael experienced technology-facilitated family violence (see, Dragiewicz et al., 2018) from his partner at the point of separation, prompting him to seek protection:

> *I was trying to break it off, but he wouldn't accept it. So, it started with drama on Facebook, but I just didn't look at it. But then, people started contacting me that I hadn't spoken to in 15, 20 years, and said, 'Do you know what's going on?'. So, it was just everywhere. There was no physical violence in it … he had my profile pic, for example, with a banner of 'PSA, stay away from this man' kind of thing. It was just everywhere. I reckon he'd contacted about 2,000 people … every time I walked down the street, I was paranoid that people were looking at me.* (MICHAEL, MAN, GAY)

For some participants, their engagement with the FVIO system was informed by experiences of physical violence. For instance, Paul (trans man, pansexual) was listed as an AFM after his neighbours called the police when he was assaulted by his partner, who had returned from work intoxicated and aggressive. Anarchist (trans man, queer) described being strangled by his ex-partner while he was asleep, which prompted his seeking legal protection. Nathan (man, gay) had multiple intervention orders against multiple different former partners. His experiences were heavily informed by physical violence from multiple partners, including an incident where his eye socket was fractured.

Some participants implied that the violence they experienced was bi-directional. This is captured in the accounts of Neville:

> *I was in a relationship at the time. It was about four years and … things were a bit rocky, but on this particular day … there was an incident where my partner actually assaulted me and as a result, I called the police and the police attended and that was the beginning of this saga…* (NEVILLE, MAN, GAY)

> *Look, I think probably in the six months leading up to the [date redacted], there had been, and across all of the different, I guess, forms of family violence. I think our fighting was a big one, emotional and psychological abuse was pretty rife. In the couple of months before the [date redacted] there was probably a couple of instances of physical violence but nothing too significant.* (NEVILLE, MAN, GAY)

Here, we see Neville describe 'our fighting', implying that it was not one-sided but bi-directional, within the context of relationship breakdown. He later said, 'I'm certainly not saying I was perfect, when it comes to the abuse and the violence, I certainly wasn't'. It is important to note that family violence being bi-directional does not mean the absence of a predominant aggressor, or of a partner that is more controlling or violent than the other (Johnson, 2008). In Neville's case, he describes the violence experienced from his partner becoming a pattern upon separation – in particular, this was characterised by legal systems abuse via the FVIO system.

Research suggests that LGBTQ+ persons are particularly vulnerable to family of origin violence – that is, violence perpetrated against them by their biological family (Hill et al., 2020). Victim-survivors of family of origin violence may also face challenges in 'seeing' this form of violence as family violence and/or having others recognise it as such (Lusby et al., 2022). Some participants in this study sought protection from family members. John (man, gay), for instance, was seeking protection from his brother but also noted that he had experienced years-long abuse from his entire biological family. Similarly, Andy had experienced 'verbal abuse and physical violence' from his siblings and obtained an intervention order against his sister. Andy stated that he had long experienced abuse from his siblings due to his sexuality:

> *Look, it had been ugly all through life, I was always called poofter, faggot … I grew up with that, my brother has been very violent towards me, very physical. And it's frightening.* (ANDY, MAN, GAY)

Emma did not officially apply for an intervention order,[1] but they did seek advice from a lawyer, as the abuse they were experiencing from their mother was escalating. Despite having moved to another city, they were living in a state of fear and hypervigilance. They described serious experiences of abuse, which began when they were a young child:

1 Whilst eligibility for the study required participants to have engaged with the FVIO system as an AFM or respondent, some clients of the LGBTQI Legal Service requested to participate and only during the interview did the researcher become aware that they did not meet the eligibility criteria, as was the case with Emma. Nonetheless, Emma's experiences offered significant insight, and thus their transcript was included in analysis. There is a need for further research that captures victim-survivors' reasons for not engaging with the FVIO system.

She was always a pretty toxic and manipulative person. She was quite abusive to my stepfather growing up and then when she eventually divorced him, a lot of that sort of negativity turned more towards me. I moved out to try and get away from her and she started stalking me. She would wait outside my school. She would text me or she'd use other people. At first, it was family members and then she would contact my friends' parents and get them to try and talk to me or get my friends in trouble to try and talk to me. She followed me home on trains and she actually broke into my house a couple of times to try and contact me. (EMMA, NON-BINARY, PANSEXUAL)

Sandy and Willow are current intimate partners who were interviewed separately. They both obtained an FVIO against Willow's former male partner's current partner:

At the same time, [name redacted], who is [name redacted]'s now ex-partner, so the children's other stepmother, she had been sending harassing messages, emails, phone calls, to [Willow] through our entire relationship and for 10 years prior to that. Then she'd started on me, with really abusive and homophobic messages. I just went, this is not on, I'm not putting up with this… (SANDY, NON-BINARY, GAY/LESBIAN)

Some participants applied for cross-orders – that is, they sought an order protecting themselves after their partner or the police had already initiated an order/application against them. The quote below captures the account of one survey participant who is a Victoria Police officer, as is her abuser:

I sought the order to protect both myself and my son as she has now started the abuse using him as a weapon. I was too scared to take out an [FVIO] against her and was warned off it by police … She retaliated by making up abuse stories, claiming I abuse alcohol and have mental health issues, and got Victoria Police to take out an order against me. They did not speak to me to hear my side of the story first… I took out my own order after being served with one at my workplace in front of my colleagues … (SURVEY PARTICIPANT)

As is evident in the above analysis, engagement with the FVIO system as an AFM is not linear, with participants' reflecting on a vast range of experiences of family violence and of entry into the system.

7.1.1 THE APPLICATION PROCESS

Of the 36 survey participants who had been listed as an AFM, 63 per cent cited the police as initiating the application, with the remaining 37 per cent initiating the application privately. Whilst the sample size is small and not generalisable, it is important to note that across the State, police initiate approximately 77 per cent of all FVIO applications (Crime Statistics Agency, 2021). The survey results suggest that the number of police-initiated applications may be lower for LGBTQ+ victim-survivors, but further and more robust quantitative research is needed to support this claim.

Participants had a range of experiences in reporting abuse and applying for an FVIO. A number of participants went to the police as the first point of call. Some had positive experiences and found the police to be supportive:

> *So the police, in the intervention [order] part were great. They were highly attentive at trying to keep my apartment safe…* (NATHAN, MAN, GAY)

Others, however, spoke of dismissive responses from the police, which for some resulted in their pursuing a private application. The survey results revealed that 27 per cent of participants who sought an application privately had previously sought police support – upon being denied a police-initiated order, they had resorted to a private application:

> *They [the police] were not nice in the slightest and acted as if I was a hysterical woman making drama for the sake of attention.* (SURVEY PARTICIPANT)

> *The police … they weren't too worried about it. They used to brush it off, so I did it by myself.* (JOHN, MAN, GAY)

Despite having to go to the police station five times before they assisted him, Andy initially spoke positively about the response he received from the police. (He was empathetic in regard to how busy the police were.) However, when further questioned, he revealed feeling that their response was informed by homophobic attitudes:

> *Well, I could kind of like see the face change a little bit when it came down to, when I said to her, I'd go, 'Listen, I'm being verbally abused and I've been physically attacked'. And I said, 'It's about me being gay', and I said, 'In the family, I'm sorry, I have a lot of bigotry in this family'. And it was kind of like, I don't know, you can kind of like tell and see in the face, that it wasn't important enough for them … It did make me feel a little bit awkward…* (ANDY, MAN, GAY)

Further, the survey results reveal that 27 per cent of the participants for whom the application was police-initiated did not support the application. Police may initiate an application against the victim-survivors' wishes if they believe that the victim-survivor is at risk of further abuse (Victoria Police, 2019, p. 45). For some participants, their reluctance to have an application initiated was due to a distrust of the criminal legal system:

> *I don't trust or like the police (as an LGBTQI+ identifying person).* (SURVEY PARTICIPANT)

Of the 13 survey participants who sought a private application, 54 per cent received assistance with it. This support came, varyingly, from lawyers, friends, partners, court LGBTIQ liaison officers, and support workers. However, 46 per cent of these participants cited receiving no assistance. This is a significant finding, given what is known about the complexity of legal engagement and the barriers it presents to obtaining protection. For example, Fitzgerald and Douglas (2019) have found that intervention order applications are more likely to be dismissed if the applicant has not received assistance from the police and/or a legal practitioner. Without assistance, victim-survivors may not curate their application and statement in a way that fits the court's expectations of legal narrative, resulting in dismissal of the application (Fitzgerald & Douglas, 2019). This may be particularly pertinent for LGBTQ+ victim-survivors who face the additional barrier of presenting their experiences within a system that expects the common narrative of a woman victim and a male perpetrator.

7.2 Participant engagement with family violence intervention order system as 'respondents'

Participants described a range of scenarios wherein they were listed as a respondent on an FVIO. For example, some were misidentified by the police; some saw their partners apply for private applications against them; and some received the application in retaliation for their having sought protection for themselves. Below, we discuss some of these experiences.

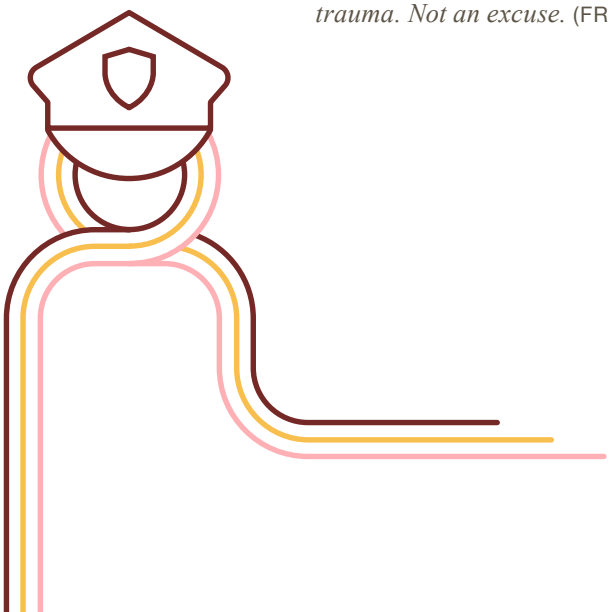
7.2.1 POLICE-INITIATED APPLICATIONS

In survey responses, 50 per cent of participants who were listed as respondents reported the application against them as being initiated by police. Misidentification refers to instances where someone who is the predominant victim-survivor in the relationship is incorrectly assumed to be the predominant aggressor by the police or other actors in the family violence system (Nancarrow et al., 2020). This phenomenon, however, is complex (see, Larance et al., 2021); in this study, such complexities, and the murkiness of victimhood itself, came to the fore. This is Frida's experience:

> *So, we had broken up last year and I texted her after a week saying, 'Let's hang out'. So, she was like, 'Okay, let's hang out'. We went to the beach, had a few drinks together and that's when I was on medication. I was taking Xanax for my anxiety. And because I mixed the two together, the last thing I remember saying to her was, 'All right, I'm going to drive you back to your friend's house so I know you got home safe', because we'd been drinking. So, at that point, I blacked out… Next thing I remember I wake up, I'm conscious again and it's like 10 o'clock at night… and police rock up, and she doesn't want to see me. Apparently, I wouldn't leave the premises … I went inside to use the bathroom. The police had to escort me and then she was in this room and didn't want to see me and I just wanted to say bye to her. I kind of – not like me, I'm not an aggressive person at all. I went to force myself into the room to say bye to her, which looks really bad, and I was arrested by police and they pushed me to the ground and it was quite aggressive.* (FRIDA, WOMAN, LESBIAN)

Frida later clarified that before the relationship had ended, her partner had been abusive towards her, and she herself admits to being emotionally abusive:

> *…and it really affected me just being categorised as a respondent, because during our relationship she was the one that was physically abusing me, verbally abusing me. I never laid a hand on her. All I committed was – not all, I committed emotional abuse. Not intentionally, just because of my past trauma. Not an excuse.* (FRIDA, WOMAN, LESBIAN)



Espio described experiencing abuse from her then partner:

> *I was in a relationship that developed into a controlling and abusive relationship over time. My ex-partner has anger management problems and she knew that, and would talk to me about wanting to change that. So I offered my full support and said, 'Yes, let's do it together'. But unfortunately, the more things my ex-partner tried to overcome the anger management, it just made her more angry. And more frequently angry. And the anger was volatile. It got to the point where I was assaulted, physically assaulted. Plainly, she beat the shit out of me.* (ESPIO, WOMAN, LESBIAN)

Espio went to the police but ultimately decided to not make an official report out of love for her partner. However, her partner applied for an FVIO against her three days later.

Kenny's experiences of misidentification did not involve family violence *per se*. According to Kenny, his partner's worsening post-natal depression resulted in a conflict escalation; the police were called and he was listed as a respondent:

> *So I think my partner at the time had post-natal depression and an incident happened at the house where I was really concerned for our baby and for her safety as well ... she wanted to leave the house with the baby, who was in a really bad emotional way – hysterical, basically. I thought 'okay, well', I tried to stop them from leaving ... I said '... I'll go, you cool off, but please don't get in the car and drive with our kid'. Which made her want to go even more, as it turned out. Anyways, when she left, she went to the police station and reported that I had stopped her from leaving the house with our daughter ... A couple of hours later Victoria Police arrived and took me up to the station and served me with an intervention order based on her statement and her statement alone.* (KENNY, TRANS MAN, BISEXUAL)

Kenny went on to tell the interviewer that the application was struck out when it became clear that the case more closely aligned with a mental health crisis than a family violence crisis. Kenny was highly critical of the gendered assumptions made by the police; they conducted minimal investigation and instead automatically assumed that (a) family violence had been committed and (b) Kenny was the perpetrator due to his gender as a man. A similar experience was cited by a survey participant, who reflects on the intersection of disability and gender. When asked how the police justified their applying for an order against them, he said:

> *Their primary grounds were that I have a disability and shouldn't be believed, and that I didn't look like someone who had been assaulted the way I described (they refused to accept recorded evidence of the entire incident), and that I am male and physically bigger than my then-wife. That's it.* (SURVEY PARTICIPANT)

Persons with disability often have their credibility treated as suspect by police when they report being victim to a crime, and for this participant, they felt this was further exacerbated by binary assumptions about gender and victimisation.

Rose spoke about an incident where she had scratched her ex-husband's car, prompting him to call the police on her; this resulted in Rose being listed as a respondent on an FVIO and facing criminal charges for property damage. However, Rose provides important context for why she 'snapped':

> *But basically, he's got them [the children] at my old house so they can still continue on at the same school because it's up near where he is and so on … I was going to say, 'Can I see my girls for our birthdays?'. They're all within three days of each other and he said, 'No'. I went back to my car and then I went back to his car and I just snapped. He said it was wire or something, but it was just a key down it. The police took out a family violence order against me.* (ROSE, WOMAN, LESBIAN)

Rose's ongoing experiences of coercive control were highlighted earlier in the report, as context for why she later sought an order against her former partner. Part of this was the perpetrator's use of the children as a tool to control and punish Rose. Whilst there were grounds for property damage charges, Rose's account suggests that responding police officers had not appropriately assessed her risk and had misjudged who was the predominant aggressor in the relationship. A survey participant also spoke about the ways in which children played a role in the making of an application against them by the police, based on the former partner's allegations:

> *Ultimately, he wanted the court to overturn the current custody order which listed myself as the primary parent. He claimed contacting Centrelink to advise my son was living 100% in my care was financial abuse. He claimed buying gifts for my children was coercion. He claimed I had no access to my son's medication and was neglecting his medical needs (I had the medication and support from his paediatrician).* (SURVEY PARTICIPANT)

Chris' experience of misidentification significantly deviates from common narratives. He found himself listed as a respondent on a police-initiated application protecting an ex-partner he had not spoken to for three years. Chris stated that his ex-partner went to multiple police stations before he found officers willing to act on his false claims. The case was dropped in court as the AFM was unable to provide any evidence for his allegations; however, months later Chris' ex-partner attempted to have an FVIO made against him again – it was also unsuccessful. Despite the fact that Chris's ex-partner was making claims about Chris, it was Chris who began to feel fearful:

> *That's when it got scary for me, because I'm like, if this is going on in his head, what else is he actually thinking? And is there actually a danger to me because of what's going on inside his head?* (CHRIS, MAN, GAY)

7.2.2 PRIVATELY INITIATED APPLICATIONS

Forty-seven per cent of survey participants who were listed as respondents were subject to private applications. For Charlie, this occurred within the context of ongoing family law proceedings:

> *I got served with it going through at the time in the context of going through Family Court proceedings because we have a five-year-old son. We separated when he was about 18 months old, or nearly two years old. He was four when she served me with that, so it was in the context of after the facts of we'd been living together...* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Seeking an application to sway family law proceedings has been found to be a key form of legal systems abuse (Douglas, 2018; Reeves, 2021), yet little is known about its occurrence in LGBTQ+ relationships. When asked about violence in the relationship prior to the order, Charlie spoke about their previous reluctance to report to the police, which made being served with an FVIO all the more shocking. They also downplayed their experiences of violence, comparing themselves to 'other' victim-survivors:

> *I had had some physical violence towards me as well, but I never reported it to the police at the time. Didn't really have evidence so I didn't see how ... It's a hard thing to answer because there's different degrees of family violence and different kinds of family violence, but definitely emotional abuse as well. Gaslighting. Those kinds of things as well, but I was actually physically assaulted by my ex-partner, I suppose minorly. Not in a way that*

> *I would say the same as some survived victims are. Nowhere near that level of potentially being killed or anything. Nothing like that. Nothing that I was terrified for my life or went hospital or anything like that ... [not] rape or nothing that severe, but definitely emotional abuse and some financial abuse and gaslighting and minor physical contact when it escalated. Pushing, kick[ing], shove[ing], being locked out of the house. Stuff like that.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Stephen was also served a private application, and like Charlie, he believed it was instigated to sway legal matters. In particular, he believed that his ex-husband, upon the breakdown of the relationship, was making legal claims of family violence so that he could continue his visa application and stay in the country. Stephen describes being unhappy in his marriage prior to separation, and he details some experiences of controlling behaviours (e.g., his ex-partner wanting to know what Stephen had talked about with his psychologist) – yet his account suggests that his partner's behaviours really became a *pattern* of abuse upon separation, and legal systems abuse was a key part of it:

> *Well, basically his application was served on me, I think around the [date redacted]. He continued to inflict coercion and control on me after that. I felt like a victim because he had taken all the moves and I'd been kicked out of my own house. I was living at my parents' place. He tried to adopt our two dogs out on Facebook without talking to me.* (STEPHEN, MAN, GAY)

A significant number of participants found themselves listed as the respondent after they had already sought an FVIO, and their partner was now seeking one in retaliation:

> *... I broke up with an ex from a fairly co-dependent relationship and he started this barrage of social media attacks. I don't even have that much social media, but he was contacting my ex's ex from 20 years ago and making threats. So, all this, everywhere; everywhere I went. And that's how it started. And then there was threats involved in all that and all that sort of stuff. And then, I filed an intervention order, and finally they found him; he filed one back in return...* (MICHAEL, MAN, GAY)

A significant concern raised by participants was this ability to initiate an FVIO application privately and with minimal evidence. It is discussed in Chapter 11.

8 The court process

The court process and the outcomes of FVIO applications were key points of interest to this study. It is important to understand not only how and why LGBTQ+ victim-survivors are engaging with the system but also how the system is experienced, and how it responds to LGBTQ+ family violence. The survey results show that the majority of participants who had been listed as an AFM had an interim order (74%) and a final order (64%) protecting them that was made by the courts. Of participants who had been listed as respondents, 89 per cent had an interim order made against them, but only 28 per cent had a final order made. This suggests that for most participants who were listed as respondents, the court recognised that the application was inappropriately and/or vexatiously made.

Victim-survivors had a range of experiences with the court system. Interview participants spoke at length about the court process – for many it was a source of frustration and secondary victimisation. The duration and frequency of attendance at court was a key point of discussion, with participants surprised by how long it takes for matters to be finalised:

> *If you can imagine going to court every few weeks for 18 months, defending yourself against horrible, horrible accusations, sometimes I wonder how I'm still standing. I don't mean to sound like poor me, because I don't want anybody to think, poor me. I want people to be outraged … But mainly, my issue is the time it took. It's taken too long. The cost to me financially, emotionally, spiritually, it's sucked me dry.* (ESPIO, WOMAN, LESBIAN)

> *What can I say about the process? I just – it's a lot of time in court. It's a lot of adjournments, a lot of time sitting there listening and not being able to present anything in my voice.* (DAVFF, GENDERQUEER, QUEER)

> *It actually took 15 months for it to be put in place and I was basically in court every month or every two months going through things. The other person had a lawyer and the lawyer just kept adjourning things because there were criminal charges attached to it as well … And it was just being dragged and dragged and dragged and dragged, so yeah, it wasn't a smooth process at all …* (ROSS, MAN, GAY)

For Espio, the longevity of the court process exacerbated her feelings of unsafety in court:

> *Well, during my many appearances for that order – as I said, you've got to apply to apply, and apply to vary, and then vary – and then, so it's always set up for all these mentions every four weeks. Every one of those mentions I had to be in court. [the AFM] would just fill in online, saying, yes, she wants to proceed, whatever, and I'm sitting in court up the end, with all the domestic violence men. I was the only chick there, ever.* (ESPIO, WOMAN, LESBIAN)

For many, the prolonged nature of the court process had a significant financial impact. Participants were frustrated that they had to bear the financial burden of what they viewed as a disorganised court system:

> *Then we pursue a court case that then ensues, and I can go into more detail about how that royally fucked up, and how the system caused us a cost $10,000 in legal fees fighting a vexatious [FVIO] which essentially supported a perpetrator. It was beyond disgusting to be involved in.* (SANDY, NON-BINARY, GAY/LESBIAN)

Participants also cited the lack of information offered to them during the process as a source of frustration:

> *Like I didn't understand anything, I didn't feel like I could ask. I didn't want to ask … I wasn't provided any information besides basically a copy of the statement and the order itself.* (KENNY, TRANS MAN, BISEXUAL)

> *So yes, my overall experience, it was damn uncomfortable. I was confused. I really, really, really wanted someone to explain, sit down and explain to me the steps, because every step I got, I discovered more. That's an option, that's a factor, that includes this, and I was unprepared for all those steps. As many times as I read the documents, I don't know if I was just dense or it was just so foreign to me … I needed a picture pamphlet or something.* (MICHAEL, MAN, GAY)

The lack of information was often accompanied with a sense of being silenced by the court process. Many participants felt invisible, as if their wishes, and their safety concerns, were ignored or minimised. Of note, many of the interviewees were engaged with the system during the COVID-19 pandemic, when the courts were primarily operating online. For some, this exacerbated feelings of not being heard:

I advocated for it to be done in person. That's how much I felt that it was so disconnected. I wasn't being heard. The judge couldn't understand – I feel half of the thing is body language as well, and you can't get that over a Zoom meeting. (CHRIS, MAN, GAY)

Online is absolutely useless … you had to physically be there with the people for them to see your fear, to hear it in your voice, to get the truth of the matter … It's such a barrier to getting the truth across. (OISIN, MAN, QUEER)

The merits of 'remote justice' was a contested point in the data. For a number of victim-survivors, the online option was extremely beneficial, both for its convenience and the alleviation of safety concerns:

… when you go to court, you don't know when you're going to get called. You might be there all day or you might be first up, so it's so nice just being able to have the thing on in the background – and I didn't even take the day off work. I just worked and then when it was my time to have my 15 minutes of fame, you know, like Microsoft Teams and did the court appearance. It was so much better. (LACEY ADAMS, WOMAN, BISEXUAL).

Thankfully for me everything was online. This helped me to feel safe. If I had of been required to attend the court with the true perpetrator, I may have not gone which would have not been in my favour. All FVIO cases should be via webex in my opinion, but more work is required to ensure the process is holistic. (SURVEY PARTICIPANT)

8.1 Experiences with court staff

Interviewees' experiences with court staff, including registrars and LGBTIQ respondent/AFM Practitioners[2], were mixed. Those who had positive experiences most frequently referred to LGBTIQ-specific staff, such as LGBTIQ Respondent and Applicant Practitioners:

I think [name redacted] from the court liaison system did an amazing job. She would ring me before every court appearance. She'd ring me after every court appearance. She'd ring me a few days in advance and talk about it, or when a further and better particular came through that I wanted to talk to her about and stuff like that, she was there every step of the way. I could not speak more highly of her. (CHRIS, MAN, GAY)

2 Applicant and Respondent Practitioners are court-appointed workers who assist and guide applicants/respondents through the court process.

So, he called me the day after the incident and he introduced himself and he was the LGBT respondent support worker or something, so he worked with respondents, part of our community. He kind of gave me a lot of advice of where to go, what to do, what's next that's going to come up, because I had no idea what was happening. He was really helpful. He'd kind of touch-based every week or so, or we'd text or whenever I'd need any – I could just talk to him and just vent about how I'm feeling and it was good for him to listen and put it into perspective for me, and just listen. (FRIDA, WOMAN, LESBIAN)

She was fantastic. Because I'm alone here. People who go through family violence are totally isolated, have no one and essentially she was my friend for the court dates and a shoulder just to cry on and just a good sounding board. I'm forever in those people's debt for their support. We need those people. (OISIN, MAN, QUEER)

However, participants did note the limitations of these services – primarily the fact that there are so few:

... they don't have a lot of staff, the person who was liaison for me, her boss ended up having to be my ex's court liaison. So, when she had questions, she couldn't go to him. It was just staff shortage. (MICHAEL, MAN, GAY)

Look, I can't remember but she may have been part of the Women's Legal Service and she was ringing up to answer a call I'd made just about getting some advice and then she said that, 'When you go to court look out for someone wearing a purple sash or pink or purple sash'. I said, 'Why?' She said, 'Well, they're representing the LGB and you'll ask them and they'll be able to help, sit beside you…' So I asked for that at [court location] ... I asked ahead of time and I said, 'Do you know anyone like that?'. And at [different court location] one day I went up to there. There was no one there in that. They said, 'We don't have that service here'. (ROSE, WOMAN, LESBIAN)

Interviewees also discussed their experiences with generalist court staff. Espio found them to be effective at their job and respectful:

A lot of them are young, and I don't know if it's because I spoke to them with kindness and respect that they afforded me the same. Whenever I needed a question answered or even something explained or whatever, they were always, always ready to help, to find the answer... I have nothing but good words for the actual people who work in the courthouse. (ESPIO, WOMAN, LESBIAN)

However, others reported negative experiences:

> *... they're not very educated with pronouns. They're not very educated with our community. On the courts he asked the lawyer and myself at least three times, 'What's your gender? Why is it that?'.* (PAUL, TRANS MAN, PANSEXUAL)

> *... the registrars honestly seemed so unapproachable and made me nervous to check in with them.* (SURVEY PARTICIPANT)

8.2 Experiences with magistrates

Positive experiences with magistrates were often associated with the matter going in the participant's favour, due to the magistrate believing them and legitimising their experiences:

> *The judge saw right through her bullshit, which I was really happy with, because I was worried. Because I'm like, if she starts crying, I'm screwed. I am absolutely screwed if she starts crying because I'm a man and she's a woman. You know how courts tend to be. They tend to see a crying woman and go, poor her, yeah, you're the aggressor. I was shitting myself, but I had a judge that didn't take her crap.* (ANARCHIST, TRANS MAN, QUEER)

> *And that was the best moment ever because he actually listened ... it balanced out what had happened. And VicPol were asked to stand up and asked why they had done what they did in this situation and they didn't have an answer and he was shamed because he didn't have an answer.* (KENNY, TRANS MAN, BISEXUAL)

Some participants who were listed as respondents and had a final order against them nevertheless spoke positively about the presiding magistrate:

> *I felt in safe hands. She went to great pains in explaining what the order meant and what would happen if it was breached.* (SURVEY PARTICIPANT)

However, participants more frequently cited negative experiences with magistrates – in particular, magistrates who adopted heterosexist and gender normative lenses. For example, Chris said that during his court hearing, which took place online, the magistrate kept getting him and the other party confused:

[The judge] did not have an idea of what was going on. Was confusing me and [name redacted] … And it was very – every time we've done tele-hearings, I've never felt like I was heard. But this one in particular was just not heard at all. And because the judge couldn't see who was actually speaking, he just – and having two guys, he just didn't know what to do. (CHRIS, MAN, GAY)

The characteristics of the magistrate was a point of discussion for some; they reflected on how the differences between the magistrate and themselves made them feel:

There was one for the [FVIO] matter who from memory was a male. Clearly, a straight, white, old male. And I just remember – yeah, it wasn't a positive experience. It just felt very dismissive, I think. (NEVILLE, MAN, GAY)

The first magistrate … I'm sure he's a nice person but he is a 70-year-old or a 65-year-old white man who had no understanding of any of the trials and tribulations that we have to experience and he was disinterested. It was like he just wanted to clock off to get a whisky or something. (OISIN, MAN, QUEER)

Neville also spoke about a female magistrate wearing a hijab. Neville made this point with respect for the magistrate but reflected on how the religious connotations made him feel as a gay man:

… the magistrate was wearing a hijab and to me, obviously it speaks of religion. It's pretty clear what religion thinks of homosexuality and so that made me feel a bit … I don't know whether it made me feel bad or uncomfortable. It was just – it was a weird feeling, if that makes sense. … look, I have no doubt she … was a professional … And, look, I want to be really clear, I have no issue with the cultural or religious background of the magistrate. I just think it was a bit of a weird situation … Obviously, they were very strongly religious, because they carry those practices into their workplace. I know what that religion's view is on that, and as a result, I struggled with not feeling judged. (NEVILLE, MAN, GAY)

A persons' being part of the LGBTQ+ community may not be apparent to the courts, especially in the context of an opposite-gender relationship. This survey participant did not disclose this aspect of their identity due to a belief that it would result in discrimination from the magistrate:

They want traditional relationships where the women have bruises on them. I would not even go into my orientation in court as I think it would be used against me. (SURVEY PARTICIPANT)

Lusby et al. (2022) highlight the ways in which disclosing one's gender and/or sexual identity can present risks to LGBTQ+ victim-survivors, and thus, victim-survivors may carefully select whether to make this disclosure. In the above example, this survey participant determined that it was not in their best interests to disclose as it may have resulted in discrimination.

More broadly, participants cited shortcomings in magistrate responses, such as inconsistent practice across various magistrates and courts, rudeness, and erring too far on the side of caution in making decisions in FVIO matters:

> *There was an inappropriate and concerted attempt by the magistrate in the first mention hearing, before I had submitted my FVIO application to accept my former partner's order. This appeared to be an attempt by the magistrate to clear cases from the list without a full understanding of all the relevant facts.* (SURVEY PARTICIPANT)

> *They are quick to expect a resolution – a consent without admission. They are time poor and would rather issue an order than make sure it should have been taken out in the first place.* (SURVEY PARTICIPANT)

Research suggests that magistrates may adopt a 'better safe than sorry' approach in justifying cross-orders (Reeves, 2021) – but this practice ignores the negative impact of being listed as respondent, as well as the power it gives the genuine perpetrator to have the other party criminally charged for breaches.

8.3 Consent orders

A person listed as a respondent on an FVIO may consent to the order with or without making an admission to the behaviours listed in the application, or they can contest it. Participants in the study who had been listed as respondents sometimes cited experiences of being pressured to consent to the application made against them, despite their being a victim-survivor:

> *I would never agree to something that I'd never done, so I went to court with a duty lawyer and basically asked for further and better particulars. On that first go, the police were like, 'Well, no, you need to just agree to it now. You're just dragging it out'. – they basically just wanted to tie up the case, even though there was no evidence … 'I've done nothing wrong. I'm not agreeing to something that I've not done'. And this had – the intervention order has repercussions forever. And they're like, 'No, no, no. Just agree to it. You're not admitting to blame. Just agree to it'.* (CHRIS, MAN, GAY)

... the other alternative they gave was to accept it without admissions and I was just like that's not – that'll be used against me, I'll end up with a criminal record or something. I had been a foster carer before and we were looking to do that again, we're now foster carers. (WILLOW)

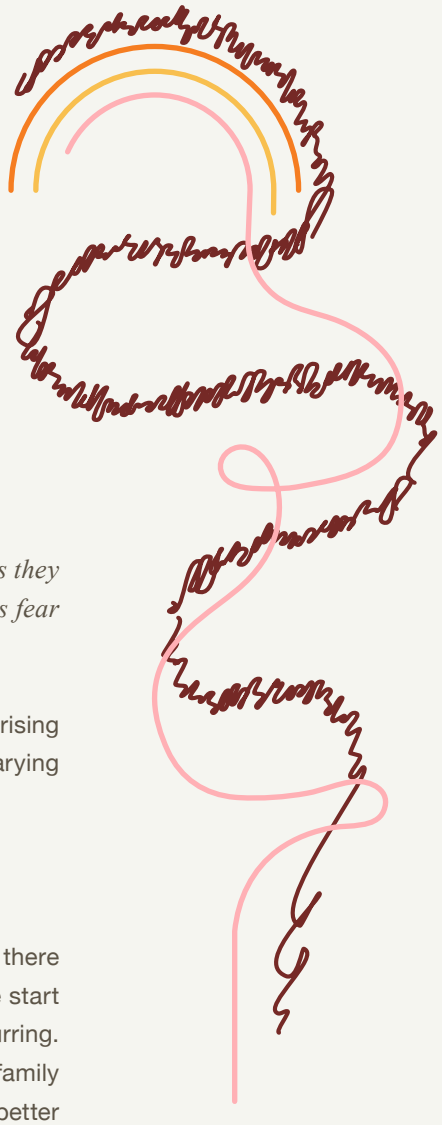
Whilst some participants did contest the application, others consented to the order:

Look, we'd just been back and forth to court so many times that I really just wanted the issue finalised. And if I just consented in the first instance, the intervention order would have been over by the time our court appearance was that I actually finally consented to it, so it was just getting ridiculous. And my ex wasn't backing down on any of the allegations. (LACEY ADAMS, WOMAN, BISEXUAL)

Yeah, there have been times where I've been like, do I just contest it because it's bullshit? But then I'm like, it's going to go on for years and by the time those years have gone by this one order would have been finished by then. So, it's just like, just go with it. (FRIDA, WOMAN, LESBIAN)

This finding is significant. Under the Family Violence Protection Act 2008 (Vic), magistrates can grant final orders without being satisfied on the balance of probabilities that the respondent has committed family violence and is likely to continue to do so – if the respondent willingly consents to the order. However, this clause becomes problematic when respondents are pressured to consent to the order, even where they feel it is not in their best interest. Previous research suggests that magistrates may at times 'rubber stamp' applications without examining the context in which a decision to consent was reached (Campbell et al., 2021). As will be highlighted in Chapter 10, such practice has significant consequences for victim-survivors who are listed as respondents.

9 Participant engagement with key family violence sector services



9.1 Experiences with police

> *Police involvement was hit and miss. Sometimes they helped, sometimes they did not. The times they helped were helpful. The times they did not was fear inducing.* (SURVEY PARTICIPANT)

Given the prominent role that police play in the FVIO system, it is unsurprising that all participants had some level of engagement with the police. Their varying experiences are discussed below.

9.1.1 POSITIVE POLICE EXPERIENCES

Whilst participants more frequently disclosed negative experiences, there were some participants who had positive experiences with the police. We start there and emphasise that, however slowly, change appears to be occurring. Improvements may speak to broader developments in the policing of family violence responses, but they also suggest that police may be becoming better equipped to respond to LGBTQ+ communities:

> *The general feedback – especially in Victoria – has been they've been amazingly good. When they have responded, it's been great. It was a challenge to get them engaged to start with. And required some – I ended up calling the gay and lesbian liaison officer in [location redacted].* (NATHAN, MAN, GAY)

Ross held the police in high esteem. Whereas other participants tended to report positive experiences with *some* officers, Ross' experience with the police appears to be consistently positive:

> *The police have been absolutely amazing. Yeah, I can't complain. Any person I've come into contact with, with the police, have been incredible... Yeah. There were two police officers that turned up at the scene and they were great. But then the first officer that I went in the station to give a statement to, he was just absolutely incredible. He really was. Again, I can't thank him enough.* (ROSS, MAN, GAY)

Some participants spoke about the impact of the FVIO and their being thankful to the police for having initiated it on their behalf:

> *Police initiating the order helped me realise the nature of the situation, and then I was glad to end the relationship and contact with my ex.* (SURVEY PARTICIPANT)

Others, who were not pleased with actions taken by the police (especially in the case of participants who were listed as the respondent), nevertheless tended to hold positive views of the police when they were treated with kindness and empathy:

> *Look, the only interaction I've had with the police through the whole intervention order was when they came to serve it on me. Now, when they did that, they were respectful, they supported me because I had 20 minutes to pack two suitcases and take what I could.* (STEPHEN, MAN, GAY)

One survey participant also commented that they felt that their being LGBTQ+ did not impact the police response:

> *The police did not treat us any differently because of our same-sex relationship. I was surprised actually, given what I knew about other police queer community relations, but also grateful.* (SURVEY PARTICIPANT)

9.1.2 NEGATIVE POLICE EXPERIENCES

Twenty per cent of the survey sample indicated that they would not call the police again for protection against family violence, and a further 38 per cent were unsure. Indeed, for many interview participants, their negative experiences affected their confidence in the police. For example, Anarchist recounted being laughed at when he first reported the abuse, and described the police as 'insensitive':

> *But the police were actually really terrible … I rang for help because she was getting aggressive. They laughed at me, and they told me to deal with it on my own …* (ANARCHIST, TRANS MAN, QUEER)

Frida, who was listed as the respondent, recounted experiences of the excessive force used against her by the police:

> *The way that I was treated, like I don't blame them for arresting me, but they didn't have to smash me in the ground … And handcuff me so tight that I had bruises all up my arms. Oh my God, it was horrible. And my feet were all grazed from when they smashed me on the concrete. There was four of them on top of me, just like I'm face down on the concrete. It was like, I had photos, it was just horrible.* (FRIDA, WOMAN, LESBIAN)

Some participants also felt frustrated by their inability to obtain protection – and by the police's support of their abuser:

> *[The police] told me to think twice as she would likely retaliate and then we would both have orders against us that would affect our careers. Then they [the police] went and took one out on me without speaking to me to give the full story.* (SURVEY PARTICIPANT)

Other participants who were listed as respondents were shocked that when they were excluded from their home upon being listed as a respondent, the police did not assist them in finding safe accommodation:

> *I was financially not able to just kind of go to a hotel for a week. And when I said to the police 'well what am I supposed to do?', they said 'just go knock on Salvation Army's door and get help there'. There were no attempts whatsoever to ensure that my safety was going to be okay after that experience and I guess I was just in such a state of shock.* (KENNY, TRANS MAN, BISEXUAL)

Paul (trans man, pansexual) also described being kicked out of his home with no assistance, and when the interviewer followed-up and asked whether the police tried to help him find somewhere to stay, he said 'no that's not their job'. In accordance with the Victoria Police Code of Practice for the Investigation of Family Violence, it is indeed the police's job to assist respondents in finding a place to stay when an exclusion order is issued (Victoria Police, 2019, p. 46).

In a similar vein, a number of participants were disappointed in the police for not referring them to support services. Some participants only became aware of the relevant support services late in their engagement with the FVIO system. For example, Kenny, who lives in a regional area, was frustrated by the lack of meaningful effort from the police to connect him with services:

I just think they need to be a little bit more clued up about services, especially homelessness services available … Like they hand you a piece of paper which was five years out of date, and you ring the number and they're like, 'No, we're not the provider for this area' and I'm like, 'This is my local government area. They should be giving me numbers for this part of town'. I just felt like making my own resource and dropping it off at the police station saying, 'This is what you need to give people'. I spent like six hours a day on the phone, on hold to support services trying to get financial support, housing, support with employment, Centrelink, everything. It was a bloody nightmare. (KENNY, TRANS MAN, BISEXUAL)

9.1.3 HETEROSEXIST AND GENDER NORMATIVE POLICING RESPONSES

My involvement with Victoria Police unfortunately left me less safe. The specific police member that was involved in handling my FVIO and circumstance in my opinion was homophobic and did not want to support me. My wellbeing was very negatively impacted … (SURVEY PARTICIPANT)

Above, we have highlighted negative experiences with the police that speak to broader barriers faced by family violence victim-survivors. However, research participants also experienced compounding and interacting barriers and challenges during their engagements with the police by virtue of their gender and/or sexual identity. For a number of participants, negative experiences were tied to the police delegitimising and/or disbelieving their experiences because the relationship did not fit the public narrative of family violence (see also Lusby et al. 2022). For example, when Oisin reported to the police, the police assumed he was the perpetrator because he was a man:

My experiences with the police, even in the gay areas … have been horrendous. I've walked in shaking because this person is harassing me on the phone. He's emailing me, messaged me and calling me at the same time and I've walked in shaking and they've said, 'So, you're the' – I tell them my story, 'Oh, you're the perpetrator, right?'. I'm like, 'No, I'm not a perpetrator. I'm here looking for help. I'm afraid'. It's just been mind boggling. (OISIN, MAN, QUEER)

Further, Oisin, who shares children with his former male partner, had his parentage questioned by the police:

[They were] asking me, 'Where did you get the children from? Where do they come from?' … 'Are they yours?' … I just thought themselves, would they ask a straight woman these questions or small woman or – 'Where did you get them from?'. I just couldn't believe it. I couldn't believe it. … The list goes on where they were laughing at me… 'Unless it's physical or sexual what can we do? We're not the polite police', they said to me on the phone … Now I'm [angry] because there has to be people like me out there going to the police … all these different really really broken people asking for help, only be told, 'Nah, see you later, mate. You're queer. You're odd. Get out of here'. (OISIN, MAN, QUEER)

This stark homophobia was also present in the experiences of a number of survey participants:

Police have attended call outs when I was living with my former partner. She would tell them I was mentally ill and they took her word for it and did nothing. Some police offcers made derogatory remarks such as calling me dyke. Because of this I don't trust police. (SURVEY PARTICIPANT)

Neither of us had good contact with the police. My partner was arrested and thrown in a cell and abused by the police for being a ' fucking dyke'. She was put in a cell and taunted with homophobic taunts (regional Victoria – 2016) … Neither of us trust or feel safe in the presence of the police. (SURVEY PARTICIPANT)

Also highlighting the shortcomings of the police response to LGBTQ+ family violence in regional/rural areas, one survey participant commented:

I do not believe that the Police in my rural area have a good understanding of FV in general and I believe there are many biases, misconceptions and a lack of knowledge on LGBTIQA+ FV. I believe this is heightened by the fact I am located in a rural area where Police are less likely to be involved with openly 'out' LGBTIQA+ people. And LGBTIQA+ people have a greater fear of prejudice due to small interconnected communities. (SURVEY PARTICIPANT)

Participants cited gendered assumptions as a key challenge in their interactions with the police. For some, they felt that the police were unwilling to 'see' LGBTQ+ family violence:

When people think of family violence, they think of the men being the perpetrators. But it's becoming quite prevalent within the LGBTQ community as well, same-sex relationships. But the framework is, I feel like it's still based on a straight heterosexual relationship. (FRIDA, WOMAN, LESBIAN)

Participants' gender identities made them less of a victim in the eyes of the police. Many participants recognised that women are the predominant victims and men the predominant perpetrators of family violence; yet they felt that when applied to LGBTQ+ communities, this narrative is harmful, especially for male victims:

> *To be automatically assumed as the man – the other part of this story is, I'm transgender, so I lived my first 27 years of life a woman and then I transitioned, so I lived in a female experience for far longer than a male experience at the time and still to this day. And [I] automatically realised what men were being put through in the eyes of the law, simply because of your gender – it threw me like the biggest curveball … it was basically like 'mate, sit down, shut up, I don't care what you've got to say. She's come in here, you need to wake up'. And even the day at court when I had the order rescinded voluntarily, the cop, came up to me afterwards and he goes 'mate, you need to watch your back, you fuck up one more time I'm going to put you in jail'. And I was like, I've never ever been to court in my life, I've never any interaction with the law whatsoever in my life, and he had decided that I was a perpetrator of family violence …* (KENNY, TRANS MAN, BISEXUAL)

Some male participants also cited having their masculinity challenged by the police, and they experienced victim-blaming attitudes for not being 'man enough' to resist the abuse:

> *Some police said, 'You're just too stressed' or 'you need to man-up'. 'If you're a man, you can just man-up. You can put up with him'. Some police would say, 'It's your own fault because you're gay'.* (JOHN, MAN, GAY)

Gendered stereotypes also played out in the experiences of women in same-gender relationships:

> *… one made the comment 'can't you girls work this out?'. Can't be trusted.* (SURVEY PARTICIPANT)

> *If my ex-partner was male, given what I have now informed police of, they would be treating the situation very different. In my experience, if there is no physical violence, they do not take the gravity of repeat psychological behaviours committed by females against another female with any seriousness, when commonly, non-physical abuse is more common between two females.* (SURVEY PARTICIPANT)

Paul (trans man, pansexual), who was earlier cited as being misgendered in the courts, was also misgendered by the police and believed that 'the police system [is] disrespectful about people's pronouns'. These participants' experiences highlight that whilst LGBTQ+ victim-survivors experience many of the same barriers as cis-heterosexual women, they also face additional microaggressions from the criminal legal system due to discriminatory attitudes and a lack of understanding about their gender and/or sexual identity.

9.1.4 SPECIALIST POLICE SERVICES

Specialist police services, such as LGBTIQ liaison officers (LLOs) are a key step in ensuring improved responses to LGBTQ+ communities. Some participants who accessed LLOs cited their involvement having a positive effect:

> *The fact that one of the officers who attended was a member of the LGBTIQ+ LLOs made a considerable and positive impact in my experience when dealing with police as they understood the situation quite well.* (SURVEY PARTICIPANT)

> *Yes, they were positive experiences, I felt supported when I was the 'victim' and they were respectful when I was the 'perpetrator'.* (SURVEY PARTICIPANT)

However, participant experiences demonstrate that these services are often inaccessible (see also, Dwyer et al., 2017; Dwyer, 2020). When asked if they had access to LLOs, some participants stated that they were not referred to them or had access issues:

> *At no point did they mention the gay and lesbian liaison officer, at no point did they say you know 'here's our number, give us a call'. I had to kind of yeah just basically go and pack my bag and drive away and sleep in my car until I worked out what was going on.* (KENNY, TRANS MAN, BISEXUAL)

> *We were talking on the phone when an emergency was called in. The LGBT officer said he would call me back. He never did. I made multiple attempts to speak with an LGBT VicPol Liaison officer since to no avail. In the end I just did what I could without their help.* (SURVEY PARTICIPANT)

> *I have met them in other circumstances but in the conflicts/issues we had, there was no evidence of LGBTQI+ officers being available or being consulted. We were both in regional Victoria... Maybe if we were in metro Melbourne CBD, things would have been very different.* (SURVEY PARTICIPANT)

Oisin, who knew about LLOs but was unable to access them, resorted to contacting one on an online dating application:

> *I tried to contact the LGBTQI officer. There was a lovely lady who was the head of it for a while for the police and she was lovely on the phone, but she just couldn't interject. I then tried to contact her replacement, a person – actually, I know it sounds weird but this is the gay world – who had messaged me on dating apps and all these things and I just reached out through multiple ways … No response. And do you know what's so – excuse me, I was going to swear – so bizarre in this whole that we're a community, he never reached out, he never did anything, and I knew he saw these messages … I just think okay … where are LGBTQI people going to get help from their own community from people who understand?* (OISIN, MAN, QUEER)

Rose, who identifies as lesbian and was previously in a heterosexual relationship with the abuser, was asked by the interviewer if she would have liked to have been referred to an LLO despite the abuse happening in a heterosexual context:

> *Yeah. Look, I would have, and I'm just finding that I'm not – even though if you say you're LGBTIQA+, whatever, at the start, it doesn't mean anything to the police. They don't say, 'Oh, we've got a special officer on site here. We'll get them to deal with you'. They don't have the time for that.* (ROSE, WOMAN, LESBIAN)

This is an important finding. It highlights that sexuality and gender identity are critical to service engagement, even in opposite-gender heterosexual relationships.

Frida was one of the participants who did interact with an LLO; however, her experience was negative – she found the officer to be manipulative:

> *They're not at all stations, and the one that had me in for questioning I could just tell she was just trying to get information out of me. She would turn off the thing and she would be like, 'All right, it's turned off now, anything you want to tell me just you and I?'. I'm just like, 'No'. The whole time I was just like no comment in the interview because I don't trust them, just to protect myself and say, 'No comment', to everything. She was just like, fake. No, no way. Even after I had to get my fingerprints taken, what the hell? All that and she was just pressing down and she was like, 'You can talk to me, just ask'. I'm just like, 'Yeah, no thanks. No'. My lawyer said they'll try and do that, after it's done they're going to try and still take you to the side and be your friend and ask you this and that, and they'll find ways to get things out of you and gain your trust.* (FRIDA, WOMAN, LESBIAN)

A survey participant who had engaged with an LLO found their response to be positive but limited:

> *I was referred to one and she was wonderful, but sadly she couldn't manage to get my son on the order or help with the responding officers.* (SURVEY PARTICIPANT)

One participant deliberately hid their sexual orientation from the police and had little confidence that the LLOs would have helped them if they had disclosed it:

> *I never disclosed my orientation with police and don't think it would have helped. I was denied access to DV liaison officers so I doubt I would have been allowed access to LGBTIQ officers. I am also part of the kink community and there is very little understanding about that lifestyle.* (SURVEY PARTICIPANT)

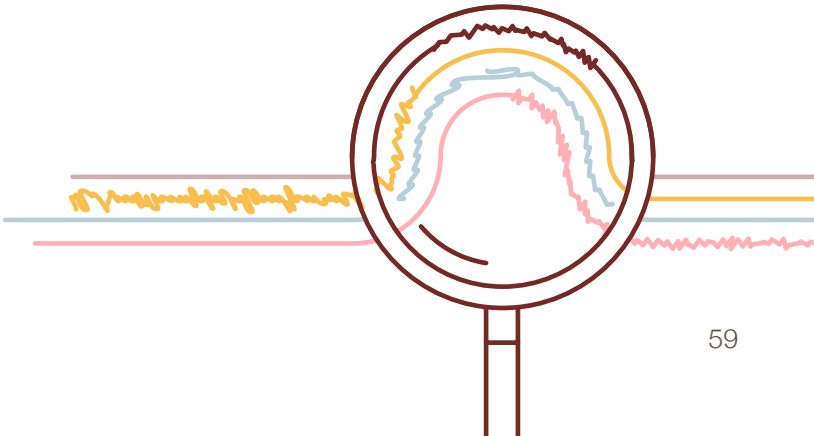
Victoria Police have 450 LLOs operating across the State. However, participants' limited access to these specialist officers raises questions about the resourcing of LLOs. One participant was aware of LLOs but stated that they have only ever 'seen' them at Pride marches. Espio was able to contact an LLO, but a non-family violence incident trumped her case – showing that LLOs face additional resource allocation pressures:

> *I was told, 'You need to speak to the LGBT Liaison Officer at [redacted], or get them to give you a call'. I called. He rang me and then, in the first few minutes of that call, the radio was in the background; there was a callout, an emergency … He goes, 'I'll call you back'. 'Okay'. I never heard back. I tried reaching out to him a few more times, got nothing.* (ESPIO, WOMAN, LESBIAN)

9.2 Experiences with support services

9.2.1 THE CHALLENGES OF MAINSTREAM SERVICES

The majority of interview participants engaged with specialist LGBTQ+ support services at some point before, during, or after the FVIO process. However, many were first referred to, or sought support from, mainstream services. These experiences highlight the challenges of engaging with mainstream services, which tend to adopt cisnormative and heteronormative responses to family violence.



Some participants felt that mainstream services were reluctant to believe them or to identify their experiences as abuse. For example, Charlie, who engaged with mental health counsellors felt that the counsellor did not take their experiences of abuse seriously:

> *Prior to that I'd seen a lot of counsellors, even during the relationship when I realised, I was experiencing family violence and things weren't right … No one took it seriously. No one acknowledged the fact that I was being abused. No one really challenged her about her behaviour or what she was doing. I wasn't really given much good advice or given any direction to more legal support or anything.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Similarly, Lacey Adams compared her experiences with specialist services to mainstream psychiatry services, highlighting the latter's problematic assumption about her relationship practices:

> *I guess they're [specialist services] just a little bit more understanding of same-sex relationships and the power dynamics of family violence. My Thorne Harbour worker, she's in a poly relationship at the moment; she's really understanding around that, whereas the psychiatrist was like, 'That doesn't sound like a very good idea', writing down in my medical file that I'm engaging in like risky sexual shit … it doesn't make you feel good.* (LACEY ADAMS, WOMAN, BISEXUAL)

Participants also found family violence-specific mainstream services to be inaccessible. For instance, Rose describes the exhaustion she felt in having to spend days on the phone calling services, and then waiting months to be connected with those services:

> *The other services. It can be a bit of a ring this one, ring this one, ring this one, and by the time you get to third down the line you're kind of going, 'This is just too difficult. I've got to wait another day to get on to it', because you've just spent from 9 am till 11 or 12 contacting people, ringing people, leaving messages, just trying to connect back with people.* (ROSE, WOMAN, LESBIAN)

The challenge of accessibility was a major barrier for male-identifying participants who sought help from mainstream services. For example, Anarchist was turned away from mainstream services and stated that his being part of the LGBTQ+ community was the only reason that he was able to access (specialist) support:

> *But had I not been in that community, no help. No help whatsoever. It would've been, you're on your own, buddy. Good luck. Unfortunately, that is just what men face, and even as someone who's LGBT, I still face it. You know what I mean? You're not exempt just because you're LGBT. Not exempt because you're trans. In fact, it's worse because you're trans.* (ANARCHIST, TRANS MAN, QUEER)

John felt that workers within mainstream services can display homophobic attitudes:

> *It's not always the service per se but you might have certain people in the service. I found sometimes that, unfortunately, some of the interfaith-based services, some are thinking, 'Why don't you just be straight and then your family will be happy with you'.* (JOHN, MAN, GAY)

He also stated that when he was experiencing homelessness, there were no male refuges available to support him. Oisin had a similar experience; his being a gay man excluded him from mainstream victim services:

> *But again, there's no services for men, especially queer men, with families. It's like I am a unicorn where there is no support groups. What I felt would be beneficial. Sitting with other people who had been through, especially queer people who have been through it, who might have families … doesn't exist.* (OISIN, MAN, QUEER)

Here, we see significant gaps in the system's response to family violence. Whilst mainstream services are designed to serve cisgender heterosexual women (due to this group making up the majority of victim-survivors), their exclusion of men claiming victim status has the unintended consequence of excluding men who belong to LGBTQ+ communities. This exclusion happens in conjunction with a lack of services available to the LGBTQ+ community. The barriers to accessing mainstream services are compounded for individuals from multiple marginalised backgrounds. For example, some participants spoke about how their disability further impacted their ability to access mainstream services:

> *I have trouble all the time finding support services. Because I'm autistic as well … Being trans and autistic is a really fun ride – not. Because people go, 'You're autistic, you're just confused'. I've had that argument. I'm like, 'No. I want to be a boy. That what this is'.* (ANARCHIST, TRANS MAN, QUEER)

While I was actually living in a domestic violence situation, I'd actually called a hotline, who had basically told me, 'You can go to a shelter', and I explained that, 'Well, because of my disability, a shelter is not safe for me, because no one will know how to help me if I'm paralysed or if I faint or anything', and they basically said, 'Well, there's nothing else we can do'. They gave me a bunch of numbers for organisations that also couldn't help. It wasn't until I got out myself and then called a bunch of queer organisations that anyone was able to give me any sort of assistance. (EMMA, NON-BINARY, PANSEXUAL)

9.2.2 SPECIALIST SUPPORT SERVICES

Research participants' largely positive experiences with specialist LGBTQ+ support services in Victoria bring home the importance of adequate resourcing of these services. Commonly cited services included Rainbow Door, Drummond Street/Queerspace, QLife and Thorne Harbour Health. Below, we highlight some of the ways in which these services assisted participants – affected family members and respondents alike.

For some participants, these services were able to provide practical safety support. For example, Anarchist spoke about the ways in which Queerspace[3] assisted him:

Queerspace was the only reason I got any help whatsoever. They helped me get a restraining order against her, an intervention order ... Queerspace were able to get me security cameras in. They were able to get me moved house, they were able to get me a personal safety device, they were able to get me counselling. (ANARCHIST, TRANS MAN, QUEER)

Charlie, who was cited earlier as facing barriers in the mainstream system, had a completely different experience once they contacted Rainbow Door,[4] who referred them on to a range of specialist services:

As soon as I spoke to them and talked to them about it, and my gender identity, and connected with the queer community again, I just got heaps and heaps of support. People were actually listening to me. Believed what I was saying. Didn't feel like I was getting scepticism or people questioning me or gaslighting me more. It was just a different response, a different feeling. Different level of support and conversation around it. Heaps of phone calls. Heaps of people going out of their way to call people on my behalf. Send emails. Just not like cutting me off saying they didn't have time. Just follow through. Heaps. People voluntarily putting their time out and I really, really appreciated that and needed it. Just needed people to believe me. (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

3 Queerspace is a support service hub within Drummond Street. They offer counselling, case management, advocacy services and peer support groups for LGBTQ+ Victorians.
4 Rainbow Door, run by Switchboard, is a free Victorian specialist LGBTQ+ helpline and referral service.

Rose cited a similarly positive experience with Rainbow Door – in particular, she felt that the employees were personal and empathetic:

> *I often start with Rainbow Door because I'll be upset about something, and I'll talk to them and they'll offer people that can help with finance. They'll offer legal help, mental health, and just people like that. So I'll contact those agencies and try and get whatever information it is I'm requiring at that stage. They've always been really helpful. Usually, the people at Rainbow Door that take that initial call are just so beautiful. They are just so sincere.* (ROSE, WOMAN, LESBIAN)

Thorne Harbour Health (THH)[5] was also frequently cited by participants. Frida was engaged in a behavioural change program with THH. Although she felt it was designed for men, and she did not feel that she should have been listed as a respondent, she found it extremely beneficial:

> *So, I mean it's better than nothing and it has really opened my eyes and it's really educational and I really love – I look forward to the session every week. It's awesome.* (FRIDA, WOMAN, LESBIAN)

Lacey Adams, who had engaged with THH for drug and alcohol counselling, found this service to be more accessible than mainstream services:

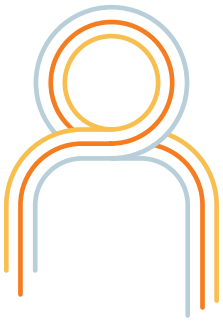
> *Yeah, Thorne Harbour Health have supported me with drug and alcohol counselling, which has been pretty good. They were a bit quicker to get into than the mainstream services, and I found them to be better quality clinicians than the mainstream service, a bit more understanding.* (LACEY ADAMS, WOMAN, BISEXUAL)

Emma, who did not cite a specific service, highlighted the ways in which specialist LGBTQ+ services fill the gaps that mainstream services cannot:

> *I found engaging with queer-specific organisations has been the best way to get really good help and support and things that are actually tailored and useful to my needs. I find queer-friendly, but not queer-specific organisations just have – they have the training, and they go to the seminars, but they don't really understand, and so, the help that they offer isn't actually useful, whereas a lot of queer-specific organisations, that cater primarily or solely to queer folk, those have been really, really helpful and have honestly been an actual lifesaver.* (EMMA)

5 THH is a LGBTQ+ specific service hub that offers a range of services for family violence victim-survivors and perpetrators, as well as health-related services for LGBTQ+ communities.

Despite largely positive experiences with specialist LGBTQ+ support services, some participants did cite limitations. A significant limitation, as referred to earlier, is a lack of resourcing, resulting in accessibility issues (see also Worrell et al., 2022). For example, Chris stated of THH:



> *That was a six-month wait for any counselling services, especially at the height of the pandemic. And they did – the pandemic sort of made everything a lot harder, and there were the LGBTQ Legal Services, which – they did referrals and stuff like that, but that was about it.* (CHRIS, MAN, GAY)

Similarly, whilst participants spoke highly of Rainbow Door, the reality that they are only a referral service left some participants disappointed – primarily due to how supportive they found the staff:

> *…and they're good but they shut you down very quickly. They say, 'Okay. Now you're linked in with Thorne Harbour. We'll shut down'.… And look, they're lovely, everyone has been lovely on the peripheral but they can't impart any change. They can't really interject and help you or even give you advice because there's – I'm sure there's some policy that you can't say go to the police or – it's just there are certain bound by legal ramifications of their role.* (OISIN, MAN, QUEER)

One participant, Davff, also expressed frustration about being referred to a behavioural change program despite identifying as a victim. Additionally, the group he was referred to was for men, and Davff, who identifies as genderqueer, felt that this was inappropriate:

> *So, it's a group of men who identify as male. I was court ordered for a men's behavioural change program, and I'm just like 'That's wrong'.* (DAVFF, GENDERQUEER, QUEER)

9.3 Experiences with lawyers

9.3.1 ACCESS TO LEGAL REPRESENTATION

Participants were asked about their experiences of legal representation. The main concerns raised had to do with barriers to a) accessing any legal representation and/or b) accessing adequate legal representation.

Legal aid eligibility criteria often leave many – who earn too much to qualify for legal aid but too little to afford private representation – with limited options (Flynn & Hodgson, 2017). Duty lawyers – free lawyers provided at court – are also under-resourced and time poor (RCFV, 2016). Thus, limited access to legal representation stands as a significant issue plaguing the Victorian criminal legal system (including the FVIO system). These challenges are captured in participant accounts:

> *But so I wasn't working, didn't have an income and didn't qualify for pro bono services because I hadn't registered for Centrelink, was more interested in trying to get a new job than getting welfare. And you just don't fit into anywhere, so you don't – there's nowhere to help you get through that.* (NATHAN, MAN, GAY)

> *So – and because [name redacted] had had legal aid the previous time, that became a conflict of interest, so I could not use legal aid. And because the Women's Legal Service is only for women, I couldn't use it, and so I was unrepresented.* (CHRIS, MAN, GAY)

In the above quote, Chris raises a key access issue – being 'conflicted out' of legal representation. Family violence perpetrators may make contact with various law firms specifically to create a conflict of interest if the victim-survivor then seeks advice from the same firm. It is not clear if Chris' partner was 'lawyer shopping'; nevertheless, it highlights one way that access to legal representation is made all the more challenging in a family violence context. These issues are exacerbated in rural and regional areas where there might only be one or two legal firms serving a particular catchment (George & Harris, 2014).

For some participants, the administrative side of accessing a lawyer presented a key challenge. Even where they were eligible or could afford representation, they found it hard to access lawyers:

> *My lawyer was fantastic, but it took a really, really long time to find one. I actually had to go through another queer service who were then able to direct me onto a different service who then found me a lawyer. I sort of put out feelers, sent a couple of emails beforehand, but everyone kind of – I don't know, kind of stonewalled me a little bit.* (EMMA, NON-BINARY, PANSEXUAL)

> *I think I'd rung legal aid and no one got back to me and then I'm reading all this information that they attach on the – it's like a little document, and I'm thinking what the hell am I meant to do? The person that was meant to call me back from – there was a rude person at [redacted] I spoke to, so I never ever rung them back again…* (ROSE, WOMAN, LESBIAN)

Oisin felt overwhelmed by the paperwork required to provide to access legal representation. He believed that this process needs to be simplified and done in a way that is sensitive to clients' experiences of family violence:

> *Lots of people that go through family violence are financially in trouble because of the family violence. You shouldn't have to provide reams of reams of reams of [paper] … I nearly had to give a DNA sample as well. People don't have that. They're lucky to have the shirt on their back.* (OISIN, MAN, QUEER)

As mentioned above, another barrier for participants was access to legal representation that they felt was adequate. Many participants relied on duty lawyers. Although incredibly hard-working, these professionals are equally under-funded and thus cannot allocate significant amounts of time to their clients (RCFV, 2016). Whilst participants were understanding of these barriers, they did reflect on how they impacted their case. Some participants, such as Frida, expressed frustration at their lawyer for not appearing at their online court hearing:

> *… there was a hearing to finalise the order because of COVID and my lawyer just didn't rock up. So, it was just so unorganised on her part … I waited and waited and waited, and no one rocked up. So, I had to do it myself, just so terrifying, my first-ever court hearing. What the hell? I had to ask for it to be adjourned and then because of COVID I had to wait six months. Even like when we went to court, the duty lawyers weren't there because of COVID, and it was really hard because you expect to get some sort of advice on the day, because they tell you you will, and they're not there. And it's like, 'Oh crap. I'm just going to have to wing this'. It's not good.* (FRIDA, WOMAN, LESBIAN)

Others spoke about inconsistent practice from duty lawyers:

> *… I don't want to appear ungrateful for the free service that I received, but the difference between the lawyers that I got was huge. I think most of them – and I know COVID had a big part to play – but quite a lot of them would correspond with the magistrate through emails only and not appear either in person or via their video link. And I think that's what allowed it to drag on so much and it wasn't until I got a lawyer who felt very passionately about appearing and said, 'This is not good enough. This has been carried on for 15 months. I'm going to appear for you and I'm going to make sure that this stops', and on that day it stopped, it all ended. I wish that had happened sooner … it just depends on who you get on the day. There's no consistency.* (ROSS, MAN, GAY)

9.3.2 THE IMPORTANCE OF LEGAL REPRESENTATION

Many participants had extremely positive experiences with lawyers, and these experiences serve as a reminder of how critical it is to alleviate the access issues discussed above. The legal process is complicated and confusing, and participants found lawyers critical to their ability to navigate the FVIO system:

> *It was still a massive, massive help and need at the time to get through that bit especially. I got stood down and just right to the last minute, I could have stuffed that whole thing up if I'd been left by myself. It may have gone a different way, to defend it. Just little things like putting the paperwork back, responding to things on time. Even just a few emails being sent was just a massive, massive help.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Some participants, such as Neville, found that legal representation was particularly important when they were listed as a respondent and had to defend the allegations made against them:

> *... as it relates to the [FVIO] where I was the affected family member and also the criminal charges, I didn't really engage with legal representation that much because I didn't need to. I think where I did engage legal services was in relation to the [FVIO] that I was the respondent for and that was largely because I just had – I was freaking out.* (NEVILLE, MAN, GAY)

Others spoke about what it was like to have a lawyer validate their experience and fight for them in court:

> *She's [the abuser] evil, she's mean, she's nasty, she's horrible. She would always blame me for everything. She [the lawyer] didn't directly say she makes bullshit up, she said it in a nice, professional way without pointing the finger. That's the best way I can describe it ... Which was really awesome because I sat there and went, someone's believing me, someone's actually listening. Someone's understanding that.* (ANARCHIST, TRANS MAN, QUEER)

> *Yeah, the court was fantastic, absolutely fantastic. My lady who represented me through Legal Aid, amazing, absolutely amazing. My sister had a paid lawyer, and I think it cost her $24,000, and I won my case. There was no money involved in it, it was the acknowledgement that this is happening, it has happened, and it's continuing to happen to this day, two years after the court case.* (ANDY, MAN, GAY)

Having access to legal representation increased participants' sense of procedural justice and allowed them to navigate the system more easily. As will now be discussed, having access to LGBTQ+ specialist legal representation increased these feelings.

9.3.3 SPECIALIST LEGAL SERVICE ENGAGEMENT

Many of the participants in this study were recruited through the LGBTIQ Legal Service – a project partner. Operating out of Southside Justice (formerly St Kilda Legal Service), it is the only funded state-wide LGBTIQ specialist legal service in Victoria. Thus, when participants spoke about specialist legal engagement, they were predominantly referring to the LGBTIQ Legal Service. For many, being referred to this service was a critical point in the process:

> *That was when I was able to get St Kilda Legal Service's help … But just a different response from the legal team there and how they spoke to me on the phone, gave me their time when they weren't even getting paid as much as people. I was paying 16 grand to help me with the other stuff who gave me less time. Just understood what I was saying. Didn't have to explain things. I don't know whether it's because of the understanding of things like gender and all that, but also just taking me more seriously I think about a female doing this to me as well.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

> *But I guess he really helped, which is good because I was lost … So, it's like having him, he knows the system, he was part of the community, it was good support. A lot of pressure was taken off … He was great.* (FRIDA, WOMAN, LESBIAN)

> *And the LGBQTI legal service, I came across them quite late in the piece, actually. I've spoken to about six other different lawyers, because a lot of them offer like a free one-hour consult … And my case manager, he was like looking at different services, ways that could help me, and he's like, 'Have you tried this legal service? Have you tried that legal service?'. And he said, 'Oh there's an LGBTI one in St Kilda'. I was like, 'Oh whatever, give me the number. I'll give it a go'. And I got [name redacted] and she was just a breath of fresh air and I was like, 'Thank god'. But I was more towards the end of my journey by then. I could have used her right from the start.* (LACEY ADAMS, WOMAN, BISEXUAL)

One survey participant stated that if it weren't for the LGBTIQ Legal Service, they would have been unable to obtain an FVIO.

However, the LGBTIQ Legal Service operates under the same time and resource constraints as other duty-lawyer services across Victoria:

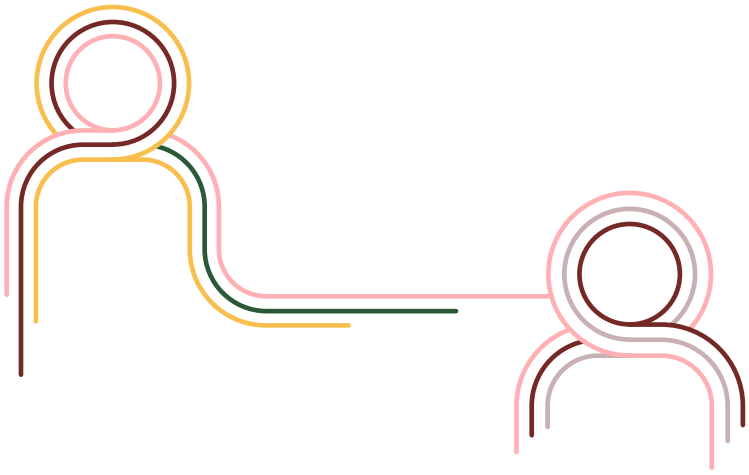
> *But I know they're under the pump but it was frustrating. Like, she'd call me and I asked her if she could ask my ex if she wanted to do counselling. She's like, 'Yeah, yeah, all right. I'll ask her'. And she's never asked her. If she had of asked her we might not have been in the situation in the first place because counselling would have helped ... Then whenever I would enquire about things ... it was just like a month waiting to get a response and whenever I'd call I wouldn't get through. Then I had one email before the court hearing, that just went on in April, and [name redacted] was just like, 'I can't help you anymore'. Which is really shit, to be honest.* (FRIDA, WOMAN, LESBIAN)

> *Having to find the money to pay for the lawyer has been really tough. I initially went through LGBTQI+ legal service but they were too busy and I hardly heard back. I understand that they're fairly new and busy.* (SURVEY PARTICIPANT)

Neville was grateful to be linked up with the service, and said they were available to answer the many questions he had; however, when asked if it was a positive experience, he stated:

> *Yeah, I mean, look, good, I guess, in the context that they were duty lawyers. I mean, I think it was just neither great nor poor if that makes sense.* (NEVILLE, MAN, GAY)

Participant experiences with the LGBTIQ Legal Service demonstrate the need for accessible specialist services at every point in the FVIO process. The ability for victim-survivors to be guided through the process by lawyers who have an in-depth and nuanced understanding of LGBTQ+ family violence can be validating for victim-survivors, whilst simultaneously improving legal outcomes.



10 The impact of system engagement on participant safety and wellbeing

10.1 Sense of safety and justice

One of the key aims of this study was to interrogate how engagement with the FVIO system impacted LGBTQ+ victim-survivors' sense of safety. Whilst we begin with positive outcomes – those in which engagement improved feelings of safety – for most participants, engagement did not improve safety and/or further jeopardised it.

10.1.1 Increased sense of safety

For a minority of participants, particularly those listed as AFMs, engagement with the FVIO system improved their sense of safety. For example, for Anarchist, the threat of criminal charges upon a breach made him feel protected:

> *Yeah, I feel safer with the order on, because she can get in a lot of trouble for breaching that.* (ANARCHIST, TRANS MAN, QUEER)

This comment is interesting because Anarchist told the interviewer that his abuser had in fact breached the order and had not been sanctioned. The dialogue between the interviewer and the participant is captured below:

> ***Q:*** *You mentioned that you feel safer because you know that she can get in a lot of trouble for breaching the order, but she hasn't got in trouble for those breaches. Does that impact on your sense of safety?*
>
> ***A:*** *No, because the police investigated it. They wouldn't have done anything if that order had not been in place. Had they not seen that there was an order in place they wouldn't have done anything.*

Here, we see how the order serves a symbolic function in increasing Anarchist's sense of safety – as well as being a means to prompt police to take action where they might otherwise ignore allegations. One survey participant expressed similar sentiments:

It makes me feel a little bit safer, in theory knowing I can call the police if he comes near me and they will respond quicker gives me some hope. (SURVEY PARTICIPANT)

Other participants, such as Andy, spoke about the symbolic function of the order and its potential to change perpetrator behaviours:

I felt great that I was acknowledged, I felt great that it would stop, great that others could probably go back and look at themselves in the mirror and think, 'I shouldn't have done any of that'. But you can't change people's personalities, but the law can. (ANDY, MAN, GAY)

Michael spoke about the FVIO *process* as 'horrendous', nevertheless 'it was effective and got the outcome it needed'. In his case, the outcome was that the abuse from his former partner stopped. Similarly, a number of survey participants spoke about it giving them 'peace of mind' and increasing their sense of safety:

It has given me some peace of mind that my former partner may think twice before attempting further family violence against me. (SURVEY PARTICIPANT)

I felt safer knowing the order was in place. (SURVEY PARTICIPANT)

Further, whilst not increasing a sense of safety per se, participants spoke about their sense of *justice* in going through the process, and how they felt that obtaining an order sent a strong message to the perpetrator and to the community. Part of this was about demonstrating that family violence also occurs in LGBTQ+ relationships:

... And I think for me, as I said, yes, there was a bit of a – that was about safety. But a lot of that process was about needing justice, needing to be heard and needing justice. So I think sometimes as a male going through that experience and going through that process, and I was obviously bigger than my ex-partner and yada yada, it might be easy to discount, 'Oh, well, the safety issue has subsided here or has been resolved here'. But in actual fact, a part of that process, a big part of it, to heal and move on was around being heard and getting justice as well, I think. (ANDY, MAN, GAY)

Like I said, the only way we got the final order, which in my mind affords us no protection and what it only is there for, and why I only kept going with it, is for some piece of paper for my mental health to say, 'Actually, this happened. This is – I'm not making it up. I'm not just being difficult. I'm not just doing this for the sake of family court ...' (OISIN, MAN, QUEER)

10.1.2 ONGOING SAFETY CONCERNS

For many, successfully obtaining an order failed to stop the abuse, or saw the abuse take different forms. For example, Andy – who was cited above as recognising the symbolic power of the order – experienced stalking behaviours from his sister's (the respondent) friends:

> *But it was frightening for those six months, because I also had strangers coming to the house that my family would send, and while I was looking after mum, people would stop at the front of the house and just stare in. And I kind of like knew who they were, I knew that they were her friends.* (ANDY, MAN, GAY)

Participants described living in a state of hypervigilance, and taking their own measures to protect themselves, such as moving house and installing CCTV at their home:

> *But there's always, in the back of your mind, that thought that he could be here. Then you see stuff on the news and you hear that this girl who was – [had FVIOs] out on these people, and even that poor woman that had reported this guy just the day before, and then the next thing she's burnt with fire. Yeah. It's crazy. There's no protection at all ... We've got security cameras on our place to protect us. We lock the door here so that we're protected. We've got a security door. There's all these aspects.* (ROSE, WOMAN, LESBIAN)

In contrast to participants who saw symbolic power in the order, a number of participants viewed it as nothing more than a piece of paper:

> *And, no, this [FVIO] did not make me feel any safer. When I used to go to the supermarket and park my car, which he would be able to recognise, I was – I always thought there was a chance I'd come back and my tyres would be let down or there'd be a key line along my car. I didn't think the [FVIO] was going to change his behaviour in that regard. He just didn't care. He just didn't care about the law.* (NEVILLE, MAN, GAY)

> *Look, he thinks he's above the law. I don't put much weight on what the intervention order says in regards to him honouring it ... He has breached it, but if you stir up a narcissist, they'll come back at you harder and stronger...* (STEPHEN, MAN, GAY)

> *It has no ability to keep us safe. It doesn't matter. The only way it would keep us safe is if he physically hit us, and even then if there's no witnesses, if there's no anything, yeah, I just don't believe anything would happen from that... I have resigned myself to the fact we can never stop family violence. I can never stop family violence. I'm going to have to live with family violence, and how am I going to do that for me and the kids?* (OISIN, MAN, QUEER)

Some participants felt frustrated that the order offered them little protection from continued legal systems abuse, with perpetrators allowed to retaliate within the FVIO system (e.g., applying for retaliatory cross applications)

10.1.3 FAMILY VIOLENCE INTERVENTION ORDER BREACHES

Seventy per cent of survey participants who had been listed as an AFM on a final order cited their abuser breaching the order. For various reasons, however, not all participants reported breaches to the police. For example, some participants did not think that the breach(es) posed a significant risk to their safety. Michael (man, gay) initially told the interviewer that his abuser had not breached the order but then qualified that, stating that 'a few times he's "accidentally contacted" friends and stuff, but it's not big enough to take anywhere, and it does no harm, so I just leave it'. He went on to say that it 'doesn't bother me enough to go through that process'. In contrast, some participants felt that reporting the breach would result in retaliation:

> *I did not want to create a reason for my former partner to retaliate against me. As a person who has been described as displaying many behaviours consistent with a diagnosis of Narcissistic Personality Disorder, any action taken against him could potentially cause a disproportionate attack on me.* (SURVEY PARTICIPANT)

Others wanted to report breaches, as they felt it did pose a risk to their safety, but they were concerned about the ability to evidence the abuse. This was a particularly pertinent issue when it came to technology-facilitated family violence. Chris, Nathan, and Stephen all spoke about perpetrators' use of Grindr, a dating/hook-up application predominantly used by gay men:

> *... the problem is that you can create online profiles so easily, and not even know that it's somebody – say I'm on Grindr or something. How do you know that that's not somebody leading you on and stuff like that?* (CHRIS, MAN, GAY)

When the interviewer asked if fear of the perpetrator messaging him on Grindr under a fake profile changed Chris's online behaviours, he responded:

> *Yeah, I would say it has. I know – so, one of the details was that he did message a couple of times on Grindr, really odd messages like, 'Somebody's got tinfoil, and why would they need that?'. He was referring to drug use and stuff like that. And the profile was all about, 'Hey, haven't seen you in a long time. Let's catch up'. So, he's on there, and he has messaged me. But if I know it's him, I just block. But then, also, if I go somewhere, I don't like to go on Grindr because I don't want somebody to know where I am, because it gives you more of an idea that I'm not here or I'm there and stuff like that.* (CHRIS, MAN, GAY)

Unlike other dating applications, such as Tinder, Grindr gives users a very specific location of other online users – thus posing an exacerbated safety risk in a family violence context. As mentioned, Nathan also raised concerns about Grindr:

> *Like he would park a Grindr profile like 100 metres, 200 metres from my house and monitor who was coming and going. I mean it was lockdown and nobody was coming and going, but the simple fact of I cannot – I'm not safe.* (NATHAN, MAN, GAY)

Whilst Nathan reported multiple breaches, he stated that this example of continued abuse and stalking is extremely difficult to evidence. Stephen's experience differs slightly, in that he cites his abuser's friend frequently checking his Grindr profile:

> *When I got to move back into the house, I was nervous, because I knew if he wanted to do something he would try and do it. There's still his friend, his ex-drug dealer, that lives close by, who constantly pops up checking my profile on Grindr. He knows who I am, why would he be checking my profile all the time? That could be a cause for breach.* (STEPHEN, MAN, GAY)

Some participants, such as Chris, were also concerned about assumptions the police might make if they reported breaches:

> *I'm more masculine. Bigger guy. You'd say that I was – I'm more on that side of the spectrum, and [name redacted] a small guy. He's academic and stuff like that. And I feel that in court, I was judged on that as well. That I was the instigator, because I was that side of the relationship. And I think by the police, as well. And then – and I know if I called the police now and I was like, 'Oh, he's just out the front of my house', and that would be – stereotypes would be at play there as well.* (CHRIS, MAN, GAY)

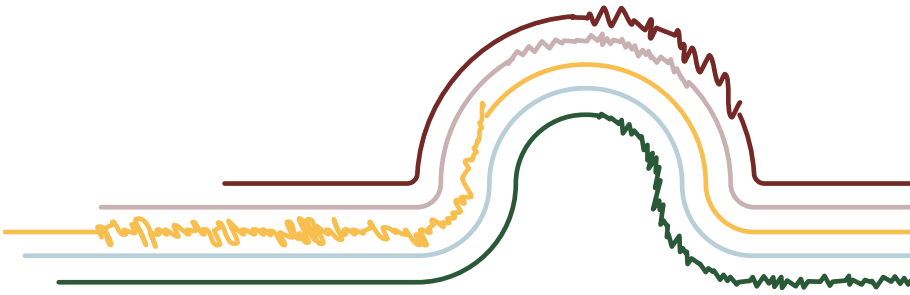
A number of participants did report breaches to the police and experiences were mixed. For example, Ross (man, gay) stated that the police have been extremely supportive of him when he has reported breaches – his abuser had been charged 10 times at the time of the interview. Whilst these multiple breaches suggest that Ross' abuser was not deterred by the charges, Ross was nevertheless pleased with the police's willingness to bring forth charges and to have his abuser prosecuted. Oisin (man, queer) had a very different experience. Oisin's child was listed as a protected person on his order; in conjunction with family law orders, however, the abuser was allowed contact. Oisin's lack of faith in the FVIO system was in part due to the reluctance of the police to bring charges for the respondent's sexual abuse of Oisin's child. Oisin, at the time of the interview, was deeply concerned for his child's safety and felt that the system was allowing this abuse to occur.

Willow's allegations of a breach were minimised by police officers, who told her that breach charges would only be brought forth for *condition one* (which states that the respondent cannot commit family violence) if the breach involved physical violence:

> *I have no faith, and then recently we went to go and report breaches of contact for the other [FVIO] that we have, and they just said, 'She's just trying to make amends, she's apologising... we don't have the context for the situation, but this isn't a breach, and at any rate you can't breach anyone on condition one'. That's what they said. I asked them what an example of something you could breach on condition one for was and they said, 'Only if it was a physical assault, and even if it was, we don't need an FVIO, that's just an assault charge'. But they essentially said it wasn't worth the paper it's written on.* (WILLOW, WOMAN, QUEER)

This claim made by the police deviates from the definition of family violence outlined in the *Family Violence Protection Act 2008* (Vic), which outlines a wide range of behaviours, including physical abuse, sexual abuse, emotional/psychological abuse, and threatening and/or coercive behaviour (s.5(1)). Perpetration of these behaviours by a respondent should indeed constitute a breach of the FVIO.

Nathan raised an important point about the police response to FVIO breaches, arguing that they wait for breaches to 'accumulate' before they take action:



> *... the first part is police are filtering what's been reported ... because police don't investigate every breach. They wait for the breaches to accumulate to the point where there's a tipping point, then they progress them.* (NATHAN, MAN, GAY)

This is concerning, as it suggests that police are waiting for violence to escalate before they take it seriously, rather than intervening early and trying to *prevent* escalation. This poses significant risks to victim-survivors and contributes to the perception that FVIOs are nothing more than a 'piece of paper'.

10.2 The impacts of being listed as a respondent

> *It hurt me emotionally, it scared me with my job because I was finishing off my psychology degree at the time and I was thinking this could impact my employment, my future, this could impact my ability to have a relationship with my daughter, this could trigger my own depression and issues which could have a catastrophic effect on myself for a lot of people around me, if I get pushed too far.* (KENNY, TRANS MAN, BISEXUAL)

As highlighted in the above quote from Kenny, the impacts of being listed as a respondent are significant and life changing. Below, we examine the impacts that were most dominant for participants who were listed as respondents.

10.2.1 CRIMINAL CHARGES

Previous research has observed a phenomenon that can occur in cases of misidentification: the genuine perpetrator extends their abuse by leveraging the FVIO they have obtained against the victim-survivor (Nancarrow et al., 2020; Reeves, 2021b). Due to branching and survey drop-out, only five survey participants were asked if they faced criminal charges for breaching the order against them – yet all five indicated that they had. The interview data expands on these experiences, with participants speaking about the AFM encouraging them to breach the order. For example, Frida describes the ways in which her former partner would re-initiate the relationship with Frida, and then when they argued, she would report Frida for breaching the order:

> *… there's been alleged breaches that she has reported. It's tricky because she texted me to come over. She's initiating all of these texts, 'I miss you, I love you'. I'm like, 'Oh my God, yay'. But at the end of the day, the police told me that she can call you all she wants, at the end of the day if you respond, you're basically stuffed … She's reported me for those breaches…* (FRIDA, WOMAN, LESBIAN)

In this example, Frida's former partner does not appear to be deliberately and maliciously seeking to have Frida criminalised but is instead using the FVIO to manage a relationship that appears to be both abusive and complicated by love. However, according to Frida, her former partner also told her, '… end of the day, I'm the protected person and you're the respondent. I have the right to call the police whenever I want and have you arrested'. This suggests that her former partner is not only trying to protect herself but to control and punish Frida.

In other participant accounts, breach reports appear to be more characteristic of legal systems abuse. For example, Davff, who has faced a number of breach charges and cited experiences of his former partner stalking him, stated:

> *So, she's incredibly, aggressive behind the intervention order … she would love me to end up in prison … And it's just unrelenting.* (DAVFF, GENDERQUEER, QUEER)

Some participants faced breach charges for minor violations; they viewed the reporting as unreasonable on behalf of the AFM:

> *So it was alleged that I breached the [FVIO], because one of the conditions was that we were only allowed to communicate via written communication and only about [name redacted], our child. And one day I sent her a message that said, 'Sorry for the random message. Give me a call back when you're free'. And that was that, and she – yeah, she took that to the police as a breach of the [FVIO] because it didn't mention [name redacted] in the message. And I had to go to court I think three times over that and eventually it was dismissed.* (LACEY ADAMS, WOMAN, BISEXUAL)

Similarly, Espio was accused of breaching the order when she was seen by the AFM's child driving on a major highway in Melbourne, on which the AFM lives. Espio drives on this road to get to and from work. The police arrested her for this alleged breach:

> *They took mug shots, took my jewellery, my phone, my shoes, and took me to an interview room and chucked me in there … It was cold. And they left me sitting in there for I don't know how long, just on my own. I was freaking out … It's probably one of the hardest things I've experienced as an adult.* (ESPIO, WOMAN, LESBIAN)

For others such as Stephen, breach charges were based on false allegations from the AFM:

> *He accused me of stalking him, or getting stuff off Facebook, and that I was stalking one of his friends or something. I don't know where he got that from.* (STEPHEN, MAN, GAY)

Willow hasn't been charged with a breach, but she was acutely aware of the power that the order gives the AFM and spoke about the ways she navigates it in order to communicate with her son:

> *No, thankfully. But because I know what he's like I just didn't give him an opportunity. There was nothing – I've almost completely stopped contacting my son who lives there … I speak to his school, so I kept in touch with what's going on there, but I didn't want to give him any opportunity to breach me because I know that he would've taken any opportunity to make it harder …* (WILLOW, WOMAN, QUEER)

Some participants also faced other criminal charges, such as assault charges and property damage charges, that were brought against them by the police in conjunction with the FVIO application.

10.2.2 ACCESS TO CHILDREN AND THE FAMILY LAW SYSTEM

Applying for an intervention order against a person in order to sway family law proceedings has been observed as a tactic of legal systems abuse in existing research (Parkinson et al., 2011; Douglas, 2018). For some participants, this was the intended outcome of their abuser, and for others, it was an additional consequence of being listed as a respondent (see also, Andreano, 2020). In Lacey Adams' case, she believes that the FVIO against her resulted in family law orders that significantly minimised her access to her child:

> *Yeah, so I basically didn't get to see or talk to him for about six months. Then she finally agreed to let me have FaceTime with him once a week for 20 minutes, so that started. And then I got a court order for supervised contact with him through a child contact service.* (LACEY ADAMS, WOMAN, BISEXUAL)

When Charlie's former partner applied for an order against them, Charlie's child was on the interim order, which restricted Charlie's access:

> *But having my child's name on it as well as one of the protected people was the most sickening part of it, because if this goes through, I won't be able to see him. That was the part that was the most terrifying.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Charlie went on to highlight a key shortcoming of the system: Even though their order was withdrawn (in that no final order was made against Charlie), it is still playing a role in family law proceedings. The interim order documents had recently been subpoenaed by her former partner's family lawyer. Charlie was frustrated by the disjunction between these systems – that one judge could make a ruling that the order lacked merit, yet another might admit it as evidence supporting limitations to Charlie's access rights. The ways in which misidentification can impact family law proceedings need to be considered. When a victim-survivor is the 'safe parent', yet is misidentified as the predominant aggressor, the Family Court risks placing the children in the primary care of the abusive parent (Andreano, 2020; Laing, 2010).

10.2.3 IMPACTS ON EMPLOYMENT AND EDUCATION

Whilst no participants reported losing their job after being listed as a respondent, some were left anxious that it would jeopardise their employment:

> *... I've never been in trouble or experienced anything like that before ... Stuff happened at work as well and questions started getting asked. I don't think it's a coincidence because these things red flag on the system because I'm a teacher. One call to DHS or one call to anything would have put my name ... If there was evidence people deserve it but if there if there isn't it could ruin your life in the process of fighting it.* (CHARLIE)

> *As I work in the health field, my job is now at risk if I am convicted, which is scary as I just bought my first home.* (SURVEY PARTICIPANT)

Stephen expressed similar concerns:

> *It was disgusting. I'm the least violent person in the world. Friends, family, people that have known me for years read the allegations and they just, you know, '[Stephen] doesn't shout at people, he doesn't get aggressive'. But it's that implication that is put on you that you could be that person. I work in community mental health, so that could have significantly impacted on my career.* (STEPHEN, MAN, GAY)

Additionally, as we saw in the opening quote, Kenny was studying at the time he was misidentified. He was worried that he might not be eligible to get a job in his field upon graduation. The same concerns were expressed by participants in Reeves' (2021b) study on the impacts of misidentification.

10.2.4 IMPACTS ON VISA AND RESIDENCY STATUS

Research has shown that migrant and refugee victim-survivors of family violence often have their precarious visa status leveraged by the perpetrator (Segrave, 2021). This may result in additional impacts if they are misidentified. Persons on temporary visa status risk being deported if they commit family violence. Two participants, Ross and Lacey Adams, spoke about the impacts on their visa status. Ross held fears of what would happen to his visa status should he face criminal charges for breaches of the FVIO against him:

> *The things I was being accused of doing were pretty awful and so much so that it would have had a huge impact on my life if anyone had believed them or I'd been charged with any of these crimes because I'd have probably lost – well, I would have definitely lost my job, I'd have been deported probably, so yeah, it really, really did impact me, reading the content of what was written, yeah.* (ROSS, MAN, GAY)

For Lacey Adams, being listed as a respondent means that she is no longer eligible for permanent residency:

> *Yeah, so I really wanted to apply for permanent residency because I've been here 11 years now and I've been – I want to have residence because my son's here, but also want to be able to apply for jobs in the public sector … And yeah, it's – I've like looked at pathways to getting a visa, but I don't meet the character requirements now. So yeah, I guess I'm stuck being Kiwi forever.* (LACEY ADAMS, WOMAN, BISEXUAL)

Whilst there is an emerging body of research in Australia on how migrant and refugee women experience visa-related threats as part of the family violence perpetrated against them (see Segrave, 2017), more research into how this form of abuse plays out for victim-survivors who are misidentified is needed.

10.2.5 STIGMA

When participants were asked how being listed as a respondent had impacted them, many spoke about the stigma associated with being labelled a perpetrator:

> *Yeah, and that's what I have an issue with, like being a respondent you're instantly criminalised and you're seen as this bad person that's the abuser, but it's so much more complex than that. I felt like that was just a lot of pressure on me.* (FRIDA, WOMAN, LESBIAN)

> *I did feel like a perpetrator. I did feel guilty when I wasn't.* (KENNY, TRANS MAN, BISEXUAL)

For most participants, this was their first contact with the legal system, and they were shocked to find themselves the 'offender':

> *... that was probably one of the hardest parts of the whole process, the most stressful, the most traumatic, I think, was – I'm also someone that I'd never had any involvement with the law, the legal system. I mean, I've had one speeding fine in my life and that was it. So this process was daunting and very unknown to me to begin with and then to have an [FVIO] as the respondent that had all these allegations, it was so scary and anxiety provoking, even though I knew that I had done nothing wrong and it was fake... (*NEVILLE, MAN, GAY)

Participants were upset that they did not experience the benefit of being assumed innocent, contributing to feelings of injustice:

> *The emotional and social impact of being assessed as guilty without any evidence required from my former partner to obtain his interim FVIO was significant ... there was a definite attitude that I was guilty and required to prove that I was innocent.* (SURVEY PARTICIPANT)

> *So I trusted them and I just followed the process that the court has. The process sucks. It's long, it is demoralising and – being accused and what's just happened to you, and having to defend yourself is horrible. And having to do it so many times. But that's not the court's fault. I put that on [name redacted] for even starting it, and then making sure that it continued. But the court followed the evidence.* (SURVEY PARTICIPANT)

Espio spoke about being listed as an AFM after having already gone through the process as a respondent; it made her aware of how different the treatment was:

> *I'm sitting in court up the end, with all the domestic violence men. I was the only chick there, ever. And sit there all day until my case was heard. ... and of course [next time] time, I'm up in the safe area, for victims of domestic violence. My god, what a different experience that ... now I've got couches and TV and tea and coffee making facilities, and people just popping in to make sure I'm okay. Plants, pictures on the wall. It was lovely. And to find out that that's how [name redacted] been treated in her applications for the [FVIOs] against me...* (ESPIO, WOMAN, LESBIAN)

It is important to note that LGBTQ+ victim-survivors may already experience or have had experienced stigma in their life due to their gender and/or sexual identity – criminalisation (or quasi-criminalisation) compounds this stigma and may further contribute to internalised homophobia (Andreano, 2020). Further, where cross-orders are made by the courts, the extremely harmful myth that LGBTQ+ family violence is both mutual and less serious is perpetuated – further stigmatising LGBTQ+ communities (Andreano, 2020).

Many participants entered this process with an existing distrust of the police and the criminal legal system, and these feelings were exacerbated by their experiences of being listed as a respondent. This loss of faith is captured in the experience of Willow:

> *So there's just no – I have no faith left in them at all. And it's potluck, it's absolutely potluck who you get on the day. It's had a huge impact on my sense of safety, on my wellbeing, on my sense of justice, and I'm pretty black and white when it comes to justice ... They just don't get it. So it impacts – essentially an [FVIO] to all of these systems is worth everything, and to the police it's worth nothing. It's just insane. So it's impacted everything, and it could've been stopped before it started except for a few really poor decisions made by a few really powerful people.* (WILLOW, WOMAN, QUEER)

10.2.6 MENTAL HEALTH IMPACTS

In conjunction with this stigma – and the accumulating effects of being a victim-survivor listed as a respondent – participants spoke about mental health impacts and (re)traumatisation from the system. Some participants, such as Rose, spoke about the impact it has had on her day-to-day functioning:

> *Mentally on some days I'd just be in tears, and I get very anxious coming up to the court date. If I know about it a week before I can put up to a week reminder in my phone I start to get quite anxious before that. It's pretty bad. Even though I've got a psychologist … yeah, I can spend a day in tears sometimes.* (ROSE, WOMAN, LESBIAN)

Ross spoke about similar impacts on his mental health:

> *It's really hard to say these words but I would say my wellbeing over the last two years … it was incredibly detrimental. I've never felt as low or as anxious in my entire life and it felt sometimes like I jumped out of the frying pan into the fire because, well like I said, the relationship itself was abusive and was awful, but then, after I called the police, because it then switched and then I had all this legal stuff going on and I was being named as the perpetrator and I was getting arrested and things like that, it was just as bad if not worse.* (ROSS, MAN, GAY)

Others specifically spoke about the traumatising effect of being labelled a perpetrator:

> *I think it – I would never put somebody through what I've been through in the last three years. It's been quite traumatic and prolonged … And I would never want to put somebody through that.* (CHRIS, MAN, GAY)

> *Because what I'm going through is the most intense, massive head-fuck I think anyone can go through, really … there was the trauma and torture. And sometimes I feel like being killed, being put out of my misery, would have been easier.* (DAVFF, GENDERQUEER, QUEER)

One survey participant also spoke about the experience leading them to drug use:

> *But personally the toll on me has been huge. I have a fallen into a depression and have needed therapy to help. I've also at times turned to illegal drug use specifically crystal meth which I'd never used before and have had to deal with that. I was basically a happy person once, now I feel mostly sad….. barely human. I know it's the assault and the false accusations that have diminished me but I don't think I'll ever be the same person again.* (SURVEY PARTICIPANT)

11 Views on the family violence intervention order system

11.1 Key system shortcomings

Participants spoke about a number of FVIO system shortcomings, many of which have already been highlighted throughout this report. However, two interlinked themes were raised in nearly all interviews and in the majority of survey responses: the gendered and heteronormative assumptions that underpin the system, and the lack of evidence and investigation required to initiate an FVIO application.

11.1.1 THE BARRIER OF THE BINARY

> *I just felt like I didn't fit into any category. And that worried me because I knew statistically, they could easily, on face value I would be just put into a masculine category. It crossed my mind. And also just with having a child, and not being the birth mother and being treated like the paternal parent also puts me in that category as well.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

A consistent theme throughout this report, and a dominant concern raised by participants, had to do with the barriers presented by the heterosexist and gender normative assumptions that operate in the family violence system – specifically, assumptions that family violence involves a cisgender man perpetrating violence against a cisgender woman in a heterosexual intimate partner context. Participants were cognisant of why this is the case. They recognised the need for resources and services available to women experiencing family violence from their male partners, but they spoke about how this focus invisibilises and harms LGBTQ+ communities:

> *But I can't ignore the statistics, myself personally of what happens. The statistics are there … [on] violence against women and children. And they're definitely gender skewed. And they're true. And they're real. I know those statistics are there and I know that data is important. And I know that it's real and I know that's why it's taken so seriously. But there isn't any data, and there isn't any statistics on people that are in the between. And that can be males or females anywhere on the gender spectrum.* (CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

Participants, especially men or more masculine presenting women and non-binary participants, felt the brunt of gendered assumptions:

Because people were willing to help because they assume I'm female, because my voice is high. As soon as they find out I'm male, they shut down and don't help me. As soon as they realise that you're not a helpless damsel in distress, they stop helping. (ANARCHIST, TRANS MAN, QUEER)

So it's very hard for police to understand sort of who the victim is, who the perpetrator is. And there's also significant bias. So my former partner was in his 20s. He's sort of reasonably thin, and when placed side by side, how could I possibly be the victim? So there's incredible bias in terms of who perpetrators are and who victims are. There's a lot of press at the moment around very stereotypical 'woman are victims and men are perpetrators'. What happens if you're the victim? Am I less of a person? (NATHAN, MAN, GAY)

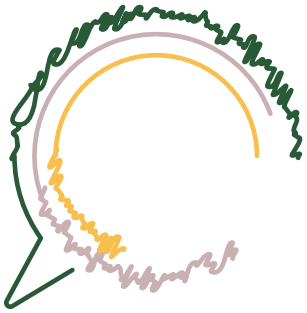
Espio felt that the police treated the family violence that she was experiencing as 'two chicks having a squabble' and went on to discuss the role of gender presentation in her relationship:

I wouldn't say I'm butch, but I would say I like to do butch things like build stuff. I never wear a dress. I think I've worn one once in the last 35 years, and that was a dare ... Whereas [name redacted] very feminine, very expressioned, very – I think she's very beautiful ... So yes, the way we present, I think, was also part of their judgement. (ESPIO, WOMAN, LESBIAN)

Participants felt that there was an intersection between gender bias and queer bias, placing them at an increased risk of being listed a respondent:

I think there are still stereotypes put out there, whether being masculine or feminine, and the ones that are the instigator of the family violence. And I think that's even more confusing in the LGBTQ community, because of the wide diversity of the community. Just because you look a certain way doesn't mean you're that. (CHRIS, MAN, GAY)

... how we balance the need to really tackle violence against women from male perpetrators, which is a huge issue with the individual realities that it is not always men perpetrating violence – or that men can be victim survivors as well, I guess. I think that's a really tricky one. And I think as we know – I mean, it does happen in queer relationships, men can be on the receiving end of it. It is just as traumatic and disruptive to your life and stressful as anybody else and I think it's really important to feel that that's recognised and I think a lot has been done to do that, but I think more needs to be done as well. (NEVILLE, MAN, GAY)



Some women participants felt that the bias worked in men's favour, viewing the system as enabling men's abuse of women:

> *Yeah, it makes no sense, and it's the difference between having all of the research that says one thing and then having this such deep-seated belief that if a man says he's a victim he must be because he wouldn't say it otherwise. Like of course he would.* (WILLOW, WOMAN, QUEER)

Comments such as these are consistent with decades of feminist research that posits women as 'incredible' in the eyes of the law, with their male abusers often being believed over them (Epstein & Goodman, 2019; Graycar, 2002; Gribaldo, 2014; Scutt, 1992). Willow went on to speak about her concern for the ways that gendered narratives may trivialise her and her partner's allegations:

> *... and in my head that's what I was thinking is that I was questioning whether or not they'd already gone, 'This is just girlie drama kind of thing' or something, or 'Maybe they're being a bit hysterical'. All of those things that you would apply to one female when you've got two people who present female then that bias may be then doubled, 'They're just working each other up' or that sort of thing. They didn't say that, but I was concerned about it, and it does then maybe affect the way you interact...* (WILLOW, WOMAN, QUEER)

As highlighted in the opening quote of this section, some participants felt 'stuck in-between' the binary of the family violence system. Emma, who is non-binary, also expressed such sentiments, and spoke about feeling as though the system did not take them seriously:

> *I think a lot of people are sort of apprehensive to help in those sorts of cases and especially since I think – especially since I'm not just a trans man, I'm not just a trans woman. I'm non-binary, and so, there's a lot of the deception with that, that I'm just following trends or that I choose my identity to be cool or quirky as if it's a choice ... and I feel like people don't take me as seriously as I wish they would. I get a lot of people who view me as kind of childish or silly or doing things for attention, because of my gender, which makes it really, really difficult ... On top of that, since I use they/them pronouns, but I have a very feminine voice and a very feminine appearance, because I haven't medically transitioned. I get misgendered constantly ...* (EMMA, NON-BINARY, PANSEXUAL)

It was the view of participants that if the system were to operate based on investigation, rather than gendered assumptions, the risk of misidentification

would be alleviated and LGBTQ+ communities would receive greater support:

> *… I think in the legal system and this domestic violence stuff, there needs to be an honest removal of gender and sex bias, you know? And queer bias. And I basically feel that every judge and magistrate and part of the legal system I've been involved in is incredibly heteronormative.* (DAVFF, GENDERQUEER, QUEER)

> *… I do believe it's cultural and I do believe it's about identity. But I don't believe it's about just masculinity and femininity. (*CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

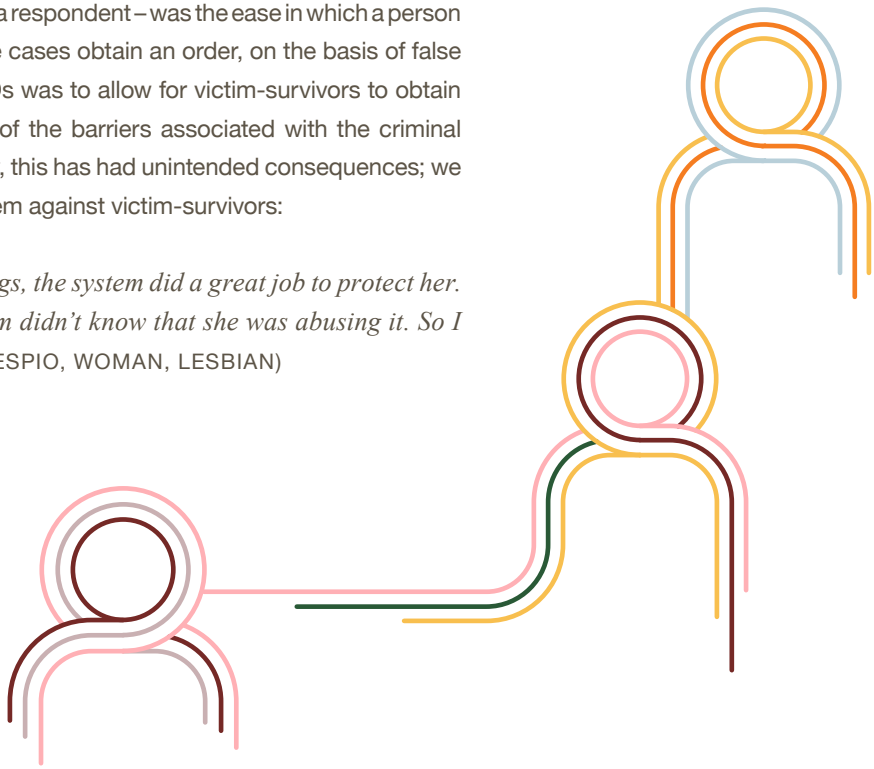
Research suggests that whilst gender is not the only relevant factor in LGBTQ+ family violence, it is still present. However, its presentation may be more nuanced and complicated in queer relationships than it is in cis-gender heteronormative relationships, and thus it needs to be treated according to this nuance. Research shows that the current gender binary thinking serves no victim-survivors well (Larance et al., 2021).

11.1.2 THE FAMILY VIOLENCE INTERVENTION ORDER APPLICATION PROCESS

> *I didn't even know you could go to a Magistrates Court and get anything. It's like it's a milk bar for [FVIOs] or something. That's insane that someone could walk off the street. Literally against anyone, you could say any name, pick a name out of the White Pages.* (SANDY, NON-BINARY, GAY/LESBIAN)

Another key FVIO system shortcoming raised by the majority of participants – especially those who had been listed as a respondent – was the ease in which a person can initiate an application, and in some cases obtain an order, on the basis of false allegations. The initial intention of FVIOs was to allow for victim-survivors to obtain protection more easily, in recognition of the barriers associated with the criminal legal system (Douglas, 2008). Inevitably, this has had unintended consequences; we see perpetrators weaponising the system against victim-survivors:

> *I think that if I was all of those things, the system did a great job to protect her. It's just unfortunate that the system didn't know that she was abusing it. So I don't know how you fix that one.* (ESPIO, WOMAN, LESBIAN)



Many participants were shocked at how easily, and with so few checks and balances, their abuser could seek an FVIO against them. Some spoke about the role of police as third-party applicants and the minimal investigation that occurred when they were listed as a respondent:

> *I was then told that they don't even investigate these incidents. They literally just take a statement and then serve the application. But I think the Victorian Police's policy is that anybody who makes a statement of family violence automatically – the police need to take it to court, or something like that, I've been told. And I just find that – you're prosecuting a case that you haven't even investigated, and the – how many people use the system as revenge? ... I was literally given a piece of paper and said, 'Here's your court date'. And it's like, aren't we in a community where you investigate these things, and people who potentially have done something go to court, not innocent people?* (CHRIS, MAN, GAY)

> *... I would expect them to exercise a little bit more common sense, a little bit more empathy and understanding, trying to avoid ... obviously we want people to be safe and they were left with the impression that my ex-partner and child weren't safe but at the same time there was plenty of information for them, they could have cross-checked that instead of handing out an [FVIO] they could have said 'don't go home because that obviously hasn't worked out for you today, go and cool off ...'. But to go straight down that line of [FVIO] is just, I mean it felt so hard and fast and unreasonable and ultimately did a lot more damage than good to our relationship...* (KENNY, TRANS MAN, BISEXUAL)

> *...you could just cross out my name and put her ex-husband's name, because it's pretty much the same thing she accused both of her ex-husbands of. But you see, all those things aren't taken into account. [She's] beautiful; [she's] very charismatic – people are drawn to her. She will have walked in and just used all her charm, and they've just gone, 'All right'. They didn't even ask for evidence in anything. The court did, through the process, but police never did.* (ESPIO, WOMAN, LESBIAN)

A more pertinent concern for participants, however, was the ability of perpetrators to initiate private applications. A number of participants were surprised that this option was available, believing that all applications should be initiated after police investigation. Both Sandy and Willow had tried to obtain an order protecting them from the police but were unsuccessful. However, the abuser was able to initiate an application against them privately:

And that [abuser's name redacted] can rock up at [location redacted] Magistrates Court with not a fucking brass razoo of evidence and say, 'My ex has taken my child', lie, lie, lie, 'I need an [FVIO]', and the magistrate goes, 'Child's not safe. There you go. Off you go'. Then we're fucked for 10 months fighting that. What? Like, what? (SANDY, NON-BINARY, GAY/LESBIAN)

Some participants served with a private application found the police serving it to express the view that the application was inappropriate and they were not in support of it:

*[The police] knocked on the door and he served it to me he went, he double took me and asked me what my name was again. And he seemed a bit shocked. I found that strange. I don't know what he was expecting. Then the police officer who served it to me actually said, 'This has been issued but it's all on very loose grounds. Basically, there's not much supporting it'. (*CHARLIE, NON-BINARY, STRAIGHT/GAY/LESBIAN)

I got that about four days afterwards, I received it. The police phoned me and they just said, 'You need to come to the station and pick this up'. They said, 'We did not support it, so we want you to know it was not supported by us'. And they explained to me that anybody can go and apply for one at a magistrates' court and they just told me not to worry and they were really lovely and they warned me that some of the things in it were really nasty but just to keep calm and not worry about it. So, yeah, that's what happened. (ROSS, MAN. GAY)

A number of participants were adamant that private applications should not be allowed and that generally there is a need for more thorough investigation at every point of the FVIO system:

There's actually been fuck-all investigation. She alleges things and that's it, really. There's been – I wish they'd investigate me, because I've got nothing to hide. And it's been no investigation … if you're going to take children away from people, if you're going to condemn people to being under constant legal attacks … there [needs to be] some vigorous investigation, which there was none, really. There was none. It's basically it's on the basis of allegations. The system just churns away. (DAVFF, GENDERQUEER, QUEER)

Police should HAVE to speak to both parties first, and get BOTH sides of whatever the circumstances are, and the history of the relationship. It should be very clear to the Court if police have NOT spoken to both parties and they are acting on the words of one party alone. The first court date should allow the alleged respondent to have a voice if they have not been spoken to about the allegations before. (SURVEY PARTICIPANT)

> *Have an open mind. Don't judge. Don't have preconceived ideas of what you think the perpetrator and the victim looks like. Look for the truth. And looking for the truth doesn't need to take ages. If I had been asked once, just once, I could have provided everything they need. But I was never asked.* (ESPIO, WOMAN, LESBIAN)

This theme of the ease in which a person can apply for an FVIO is intertwined with participants' earlier cited concerns about gendered assumptions, and who the system decides can apply for or obtain an FVIO. When problematic gender assumptions inform these decisions, LGBTQ+ victim-survivors are at an increased risk of being disbelieved and/or misidentified.

11.2 Future direction and areas for reform

Participants were asked about key areas of the FVIO system they wished to see reformed. They are explored below.

11.2.1 FUNDING FOR SPECIALISATION AND STAFF DIVERSITY

A number of participants spoke about the need for increased resourcing for specialist services; they saw it as critical to improving the outcomes for LGBTQ+ victim-survivors who engage with the FVIO system. This is not surprising. Whilst most participants had positive experiences with LGBTQ+ specialist services, accessibility was an issue. A recent report found that during the COVID-19 pandemic in particular, LGBTQ+ services experienced significant waitlists and resourcing pressures (Worrell et al., 2022), consistent with the larger family violence service sector. However, the pandemic did not influence a stark reality pre-dating it: there are few services across the state and existing ones are often underfunded. Willow captures the importance of adequately funding specialist services:

> *Those services need to be bigger, they need to have the capacity to help more people at one time than they can because it was invaluable even in just my healing. And going into a group therapy where I wasn't the only person in the room of maybe six of us who had a current intervention order against them … To know you're not the only one. You just need to be connected. If nothing else, they need to connect you with other people in a similar experience to you. So those group sessions, that's probably one of the biggest things that was helpful.* (WILLOW, WOMAN, QUEER)

However, participants went further, suggesting that there needs to be an entirely LGBTQ+ family violence system stream, including an LGBTQ+-specific court and police station:

> *… we need magistrate[s] specifically for a minority group of people, be it LGBTQI, Muslim people, people with lived experience or people who know this is the dynamic of a queer relationship or lesbian relationship, gay, transgender, just so that they can know actually – do you know how hard the world is for us already? Do you know what I mean? There should be, 'Oh, do you identify as X, Y, Z? We're going to direct you to the Rainbow Magistrates Court because they'll have real experience'. It's police, it's really informed magistrates who have undergone really specific training in family violence and family violence in the context of queer relationships…* (OISIN, MAN, QUEER)

Oisin went on to make a similar suggestion for the police:

> *We need a dedicated police centre. It doesn't matter if you live in Footscray or Ivanhoe, we need – 'Okay, you're a queer person going through family violence, contact this police station. It doesn't matter if you can't get there, they'll talk to you on Zoom, on something. We're going to talk to you, okay' … it should be painted every colour of the rainbow so that the gays can go to it like Mecca and get the help that they deserve.* (OISIN, MAN, QUEER)

In the absence of such a system overhaul, victim-survivors wished to see change including, at a minimum, the presence of key system actors (such as magistrates) who belong to the queer community or are at least trained in LGBTQ+ family violence:

> *And even just a line of judges or a couple of judges that are sort of a part of the community … Yeah, or even queer ally judges that understand our community, rather than just that whole normality of what society thinks we should be.* (CHRIS, MAN, GAY)

> *Would be nice to see some further diversity in the justice system. I wonder how many openly gay magistrates we have? Any trans representation amongst court staff?* (SURVEY PARTICIPANT)

As highlighted in a recent report by Lusby et al. (2022, p. 5), affirming and culturally safe care from family violence services can look like the 'correct use of pronouns, acceptance and affirmation of a client's gender and sexuality … It also meant believing LGBTIQ clients' accounts of [family and sexual violence] and validating their need for care and support'.

11.2.2 TRAINING

Closely linked to the above discussion of funding for specialisation, participants emphasised the importance of whole-of-system training on how to respond to LGBTQ+ victim-survivors. Many participants raised this within the context of policing response:

> *... all staff should be trained. Better diversity and sexuality or something like that. And I don't know what training they do, I don't know if they get any training at the academy ... I don't know any of that stuff. But you would like to think that they would want that kind of training to happen ...* (KENNY, TRANS MAN, BISEXUAL)

Misgendering was also raised as a point for which services require increased training:

> *First, I say even the courts or the police have to be educated well about this ... even the hospital and all that are already are being well educated with the patient's information. They should respect that as well. They're representing the justice of this country. I don't think they're very educated in that part, so firstly education.* (PAUL, TRANS MAN, PANSEXUAL)

> *A basic understanding of pronouns and gender identity would be helpful. Repeatedly having to correct the pronouns used when referring to my ex (a trans woman) made the entire experience more frustrating and upsetting than it needed to be.* (SURVEY PARTICIPANT)

A point was also raised by Nathan, who experienced technology-facilitated family violence, that police need updated training and protocols on how to deal with this form of abuse:

> *I think they're a great start, but there's a long way to go and there also needs to be a way for them to evolve as we do. For example, there needs to be a way for them to be able to tackle the digital world in a constructive way that's actually going to make a difference.* (NATHAN, MAN, GAY)

Willow, speaking about the Family Violence Command, critiqued the current operation, in which police are rostered into the division for a limited amount of time. She argued that officers who have awareness and interest in responding to family violence should be able to apply to work in this team on a permanent basis. In doing so, Victoria Police would be able to better target training and have a permanent division with the appropriate understandings of family violence.

Participants also emphasised the need for system-wide training on LGBTQ+ family violence. Recommendation 167 of the Victorian Royal Commission into Family Violence advised that all funded family violence services achieve Rainbow Tick accreditation. Whilst this recommendation has been marked as implemented by the government, it has been a staged roll-out and not all services are accredited. Participants suggested that accreditation and training need to be ongoing, to ensure that mainstream services are equipped to respond to LGBTQ+ family violence, and to avoid tokenistic gestures.

11.2.3 SERVICE REFERRALS

Participants also emphasised the critical importance of police referring them to appropriate services, as is required under the Code of Practice for the Investigation of Family Violence. For many victim-survivors, this did not happen when the police attended:

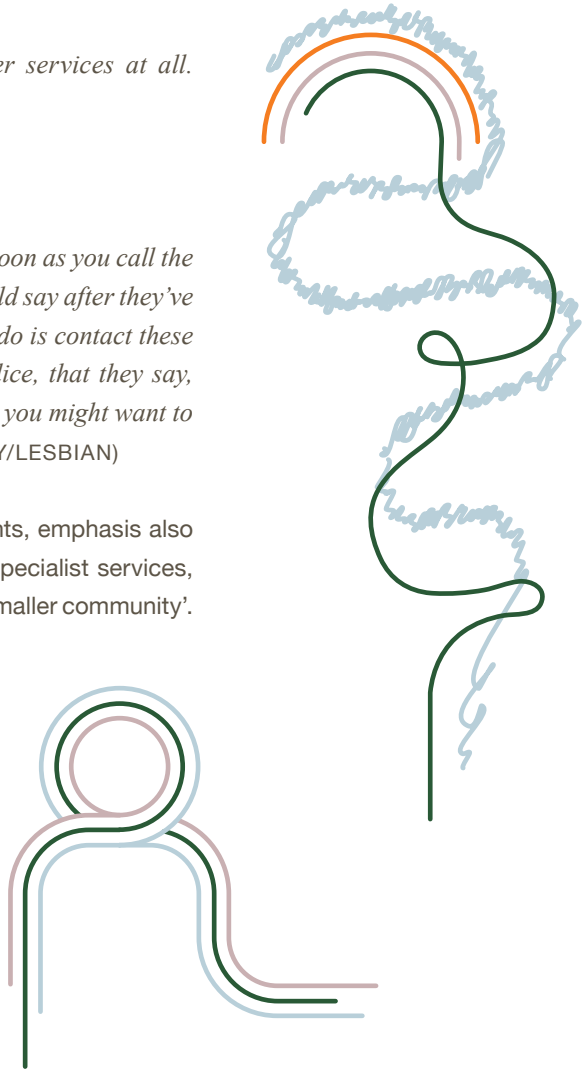
> *The police were the most difficult to work with, just in terms of all on deaf ears, all the time, and they were so hard to work with … I wasn't offered LGBT services that I now know exist.* (ANARCHIST, TRANS MAN, QUEER)

> *I don't recall them referring me specifically to any queer services at all.* (NEVILLE, MAN, GAY)

Sandy cited this as a key area of reform:

> *The support services should be introduced immediately. As soon as you call the police, or Child Protection, the very next thing that they should say after they've taken the information from you is, the next step you need to do is contact these people. Or, that before you make your statement to the police, that they say, we're happy to take your statement but maybe before you do you might want to get in contact with these people.* (SANDY, NON-BINARY, GAY/LESBIAN)

Being referred to services is important, but as Michael highlights, emphasis also needs to be placed on referring LGBTQ+ victim-survivors to specialist services, rather than mainstream services – 'they just understand – it's a smaller community'.



11.2.4 SYSTEM ALTERNATIVES

A key theme throughout this report has been the ways in which the FVIO system is failing LGBTQ+ victim-survivors. This system is flawed in its response to cisgender heterosexual women (Campbell et al., 2021; Reeves, 2020; RCFV, 2016; Ulbrick & Jago, 2018), yet LGBTQ+ victim-survivors experience additional microaggressions when engaging with it. Participants spoke about how LGBTQ+ victim-survivors are invisiblised in the system:

> *It's dangerous and disempowering as well. It actually – its engagement gives the perpetrator more rights to abuse you and it's bizarre. Bizarre. Especially for our community because we're not real parents. We're not real victims.* (OISIN, MAN, QUEER)

Some participants therefore spoke of alternative options – ones that meaningfully address family violence and move away from a reliance on FVIOs:

> *Actually, sometimes we need to actually have a family violence psychologist/counsellor look at the story and go, 'Actually, getting this order is going to be like red to a bull and actually these are the steps that we need to do to protect you. Don't involve the police', especially if you're a member of a marginalised community … I think we need to be realistic … We need a psychologist just to sit down with Mary who has been going through this for 15 years and go, 'Mary, I wouldn't get the family violence order. What I'd do is I'd go this way around to try and get some protection for the children'.* (OISIN, MAN, QUEER)

> *Then regardless of who is the perpetrator and not, and who's in danger and who's not, there would be far more holistic approaches that would work. Restorative justice style things, which are rehabilitation and mediation. So, none of that happens. None of that happens. This is very cut and dried. Victim, perpetrator, and then consequences.* (DAVFF, GENDERQUEER, QUEER)

Survey participants questioned the FVIO system, raising concerns about it being the 'only' option for victim-survivors of family violence. In the first quote below, a survey participant states that they would not report to the police again – then said that they probably would, due to a lack of options:

> *My sense of safety in the world has been utterly shattered. I can't quite articulate it better than that. I would never bother going to the police again, there's no point to them. Although I probably would, because where else do you go? Next time I'd have 0 expectations due to their incompetence.* (SURVEY PARTICIPANT)

If I needed to I would. because it's the only system we have. (SURVEY PARTICIPANT)

Similarly, another participant commented on the ways that the system requires FVIO system engagement to validate abuse:

I have to. There's no other option. Trying to manage things without the FVIO legal system just casts more doubt on the validity of the family violence I and my children have experienced and continue to experience. (SURVEY PARTICIPANT)

It is apparent that participants would like to see alternatives to criminal legal system intervention and would have engaged with such alternatives had they been available at their time of engagement:

There didn't seem to be a chance to deal with things outside of the court/justice system. (SURVEY PARTICIPANT)

It's fucked up! Both my partner and I were listed as being respondents and AFMs at the same time. We both felt like the police pursued both avenues and weren't interested in looking at other ways of dealing with the conflict beside judicial/court options. (SURVEY PARTICIPANT)

Participants offered suggestions that align more closely with therapeutic and rehabilitative approaches to addressing family violence:

There needs to be a major overhaul. The offer of counselling/psych support/mental health support would be much more useful than the police jumping in and branding one partner an AFM and the other a respondent and then the next time doing the opposite. (SURVEY PARTICIPANT)

Realistically more people need to engage in support services, behaviour change programs etc than be charged. (SURVEY PARTICIPANT)

Yes. If I had to. There's not much in the way of alternatives. Because now I think I would do it very differently. I would start with a FV advocate assisting with a direct application and leave the police completely out of it, for example. (SURVEY PARTICIPANT)

Here, we see from participants a rejection of criminal legal system intervention – and this was also the case for AFMs who had final orders protecting them. Even though they sought protection and were granted it by the court, they would more readily have considered non-criminal legal system avenues for safety. Others saw appeal in some aspects of criminal legal system engagement, including its ability to document a history of abuse, but ultimately felt that it fell short of even that:

> *I'm a prison abolitionist. I didn't want my ex to go to prison or anything like that. What I wanted was for there to be a conviction recorded against them. That was all and the legal system couldn't even provide me with that.* (SURVEY PARTICIPANT)

To varying degrees across Western jurisdictions, LGBTQ+ persons have been excluded from family violence law, including intervention order legislation. Whilst it is covered under legislation in Victoria, one must conclude that the system – already plagued by a number of systematic shortcomings – has not made adequate space for LGBTQ+ family violence. The above comments suggest that some LGBTQ+ victim-survivors do not feel that criminal legal system engagement is the best avenue to address family violence in queer relationships, and that community-based, mental health-focused and therapeutic responses may improve the safety of victim-survivors in ways that the FVIO system does not.

12 Summary and recommendations

This report has offered unique insight into how LGBTQ+ family violence victim-survivors are engaging with Victoria's family violence intervention order (FVIO) system. Broadly, the study demonstrates that many of the known shortcomings of intervention order systems are relevant for LGBTQ+ victim-survivors. It also demonstrates that LGBTQ+ victim-survivors experience additional barriers to engaging with the system and using it to protect themselves from family violence.

The data collected in this study indicates that LGBTQ+ victim-survivors engage with the FVIO system in a range of family violence contexts. Some participants sought protection from coercive and controlling partners; their input adds to a growing body of literature showing that coercive control is indeed experienced in queer relationships (Donovan & Barnes, 2020b). Others reported engaging with the system after incidents of physical violence within the context of relationship breakdown. Sometimes this involved bidirectional violence. Whilst most participants sought protection from a current or former intimate partner, family of origin violence also brought some participants into the FVIO system.

A significant finding of this study – albeit one that requires more robust quantitative research – was the higher rates of private applications reported by affected family members (AFMs) and respondents alike. Specifically, 37 per cent of AFMs applied for an FVIO privately, and 44 per cent of respondents were subject to a private application. Crime Statistics Agency data shows that police initiated approximately 77 per cent of all FVIO applications in Victoria in the year 2020–21. Thus, we see a data discrepancy, whereby LGBTQ+ victim-survivors are potentially coming into contact with the FVIO system via different avenues, when compared to the broader state-based sample. As noted, more research is needed to explain this discrepancy; however, we suggest that this finding of lower levels of police-initiated applications may be linked to the fraught history between the police and the LGBTQ+ community. LGBTQ+ victim-survivors may be reluctant to report family violence to the police due to distrust (Victorian Pride Lobby, 2021). Additionally, the police may adopt discriminatory attitudes and/or minimise the abuse when responding to LGBTQ+ family violence, rendering them less likely to initiate an application on the behalf of the victim-survivor.

In 2016, the Victorian Royal Commission into Family Violence (RCFV) brought attention to the issue of women victim-survivors being misidentified as predominant aggressors in the civil and criminal legal system – primarily by police. The issue was not raised as a concern for the LGBTQ+ community. In fact, despite acknowledging numerous barriers to family violence legal system engagement for LGBTQ+ victim-survivors, such as the tenuous relationship between the queer community and the police (RCFV, 2016), the report did not consider the ways in which such factors may increase LGBTQ+ victim-survivors' risk of being misidentified. Despite all study participants identifying themselves as victim-survivors, the survey results revealed that approximately half of participants had been listed as a respondent on an FVIO, often in addition to being listed as an AFM. Again, this study does not offer robust quantitative data, as it works with a small and non-generalisable sample size. It is important to note, however, that Women's Legal Service Victoria found misidentification to be occurring in approximately 1 in 10 FVIO cases (Women's Legal Services Victoria, 2018). There is evidence, therefore, to suggest that LGBTQ+ victim-survivors might be at an increased risk of being misidentified, as had been found in the US-context (Andreano, 2020). Of course, misidentification is a complex issue, as is reflected in the experiences of participants who found themselves listed as respondents in a range of different circumstances. Not all were identified as perpetrators by the police; some bore responsibility for what they had been accused of. However, we reflect that most were likely the primary victim-survivor in their relationship with the other party, and their experiences as respondents were shaped by both an incident-based family violence system response and their abuser's perpetration of legal systems abuse. Additionally, participants felt that gendered assumptions guiding family violence legal system responses placed some participants at increased risk of being listed as a respondent. Specifically, they felt that if they did not fit the stereotype of the passive, submissive, 'damsel in distress' family violence victim (Goodmark, 2008), then they were unlikely to be considered a 'real' victim-survivor. Male-identifying participants felt the brunt of these assumptions.

Another finding was important to the issue of misidentification: Whilst 89 per cent of respondents had an interim order made against them by the court, only 28 per cent had a final order made. This gives credence to the argument that most participants listed as respondents were indeed misidentified, even as it suggests that magistrates are becoming increasingly adept at recognising and responding to legal systems abuse (Nancarrow et al., 2020). Nevertheless, interim orders made against victim-survivors are damaging; they have many of the same effects on a victim-survivor that final orders have – and they carry the same risk of breach charges.

Participant experiences in court speak to a well-established body of literature on the challenges of engaging with the legal system, within and outside the family violence context (Gillis et al., 2006; Hartman & Belknap, 2003; Ptacek, 1999). In particular, participant accounts – of being frustrated by the duration of proceedings, of not feeling heard or 'seen', of the lack of information received during the court process ¬– suggest that the FVIO process was not experienced as procedurally fair. When this is the case, persons are less likely to be satisfied with legal outcomes (Meyer & Williamson, 2020). These processes also contribute to secondary victimisation (Laing, 2017). However, LGBTQ+ participants experienced additional challenges when engaging with the courts. Participants recounted being consistently misgendered, having the magistrate confuse the victim and perpetrator (because they were the same gender), and feeling as though their experiences were trivialised, due to their not conforming to gender normative and heterosexual relationships. More positively, participants who navigated the court process with the support of LGBTIQ Applicant and/or Respondent Practitioners tended to feel seen, heard, and supported in ways they had not experienced prior to being connected with this service. This demonstrates the importance of LGBTQ+ victim-survivors (and perpetrators) having access to community-specific services at every point in the system.

A key finding relating to the court process was the prevalence of pressure applied to participants listed as respondents to consent to the order made against them. This pressure came from lawyers, police prosecutors and magistrates. It speaks to a key shortcoming in the FVIO system's ability to provide a safety net for persons misidentified as the predominant aggressor. As the lead author of this report has reflected on elsewhere, the FVIO system relies on respondents consenting to orders; it is as if the already significant time and resourcing constraints faced by the court system would be further exacerbated if they did not (Reeves, 2021). However, consenting to an FVIO can have significant consequences, especially for persons who have been misidentified and are continuing to experience abuse from the AFM.

Participants engaged with an array of different services, before, during, and after their engagement with the FVIO system. Unsurprisingly, the police – who act as gatekeepers to the FVIO system in a way that is unique to Australia – were discussed in significant detail. It is important to note that a number of interview and survey participants reported extremely positive experiences with the police – where they felt supported, safe and not judged according to their gender and/or sexuality. We optimistically draw attention to these positive experiences as a sign of improvement in policing responses to family violence broadly, and to LGBTQ+ communities specifically. However, a far greater number of participants reported

negative experiences with the police, and only 41 per cent of the survey sample indicated that they would contact the police in the future for protection from family violence. Participants reported police dismissing, trivialising and downplaying the violence they were experiencing, and failing to take any action, including referring them to appropriate support services. Further, a number of participants reported experiencing both subtle and overt homophobic and transphobic attitudes from responding police officers. These attitudes impacted the service provided to participants and played a role in whether they were offered protection.

Specialist police officers represent a key initiative to improving outcomes for LGBTQ+ victim-survivors. Victoria Police have 450 LGBTIQ Liaison Officers (LLOs) in operation across the State. What was striking in participant accounts was how few participants were given access to these specialist officers. The survey results show that only 27 per cent of participants engaged with LLOs. This raises a critical question – where are they? One participant stated that whilst they were initially linked up with an LLO, engagement ceased when the officer had to respond to a general policing issue. Resourcing constraints mean that specialist officers are often required to engage in general policing duties (RCFV, 2016), and in some instances this may trump their specialist role. Thus, whilst Victoria Police boasts 450 LLOs in the field, these officers are unlikely to be serving in this role full-time. Additionally, LLOs do not solely respond to family violence but to any crimes that affect LGBTQ+ persons in the community.

Research shows that mainstream services have long struggled to respond to LGBTQ+ victim-survivors and perpetrators; this is due to their functions being designed to respond primarily to family violence experienced by cisgender heterosexual women (Donovan & Barnes, 2020). It was therefore unsurprising to find that participants encountered barriers to accessing and engaging with these services. This issue was particularly pertinent for male participants. Most participants were able to access an array of specialist LGBTQ+ family violence services, and for the most part, these experiences were extremely positive. We note here that as participants were primarily recruited through the LGBTIQ Legal Service, who often receive clients through LGBTQ+-specific referral services, the fact that most participants were connected to services may not be reflective of all LGBTQ+ victim-survivors' experiences. Despite largely positive experiences with specialist services, participants did cite barriers in terms of waitlists and eligibility. This brings home the importance of increased funding for such services, but it also highlights the importance of ensuring that mainstream services are better equipped to respond to LGBTQ+ family violence, in the likely event that LGBTQ+ victim-survivors are engaging in these services.

Thirty-four per cent of participants in this study had no legal representation in court. This speaks to larger issues with access to legal representation in Victoria and indeed Australia more broadly (Flynn & Hodgson, 2017). Without legal representation, the barriers presented by the complexity of the legal system are compounded. Whilst they were sympathetic towards the time pressures faced by public sector legal practitioners, participants who did access these services often found them to be limited in the support they could offer. Participants engaged with the LGBTIQ Legal Service reported positive experiences, but this service – like the rest of the sector – suffers from resourcing issues. There is sore need for additional funding and services that offer such legal specialisation.

A key aim of this report was to interrogate the safety outcomes for LGBTQ+ victim-survivors engaging with the FVIO system. The findings reveal that for some participants, engagement stopped the violence and gave victim-survivors some control over the abuse they were experiencing, but most found the system to be ineffective in improving safety. In large part, this was due to the challenges of having an FVIO enforced and of evidencing breaches. Participants saw the abuse take new forms, such as technology-facilitated family violence; they felt that reporting was futile due to the difficulties of proving these subtle forms of abuse and stalking. For many, the order ultimately served a symbolic function only. The safety and wellbeing of those listed as respondents were also jeopardised, with many reporting life-changing consequences associated with being a victim-survivor labelled as a perpetrator. Participants listed as respondents reported facing criminal charges; they reported negative impacts on employment and education, lost or minimised access to children, and implications for their visas and residency. Further, being listed as a respondent had significant emotional and psychological impacts. Many such victim-survivors experienced lost or diminished faith in the system – which creates additional safety risks should they be further exposed to family violence.

This report raises important questions about the fundamental operation of the FVIO system. Participants who were listed as respondents were shocked by the ease with which a perpetrator could weaponise the system against them. Whilst FVIOs are designed to be easier to obtain than, for example, criminal law protection, an unintended consequence of this is the ability of perpetrators to use the orders to commit legal systems abuse (Kaye & Tolmie, 1998; Miller & Smolter, 2011; Nancarrow et al., 2020; Parkinson et al., 2011; Reeves, 2020). Despite the issues raised by participants about police practice, many were adamant that private applications should not be permitted and that all applications should be initiated only after a thorough police investigation. Participants felt that there were links between heterosexist and gender normative family violence system responses and the ability of their perpetrators to leverage this system.

BASED ON THESE FINDINGS, WE MAKE THE FOLLOWING FAMILY VIOLENCE SECTOR RECOMMENDATIONS.

1. Investment in community-controlled LGBTQ+-specific services

This study had shown that engagement with LGBTQ+-specific services improved participants' system experiences. The value of victim-survivors having access to such services cannot be overstated. Whilst Victoria is leading the way in terms of the number of queer services operating in the state when compared to other Australian jurisdictions, it is evident that victim-survivors still face barriers in accessing these services. There is a clear need for greater investment in community-controlled LGBTQ+ family violence services, which span across different points in the system including prevention, legal services, crisis accommodation and rehabilitation programs. Funding should be long-term.

2. System wide training on LGBTQ+ family violence

Per Recommendation 167 of the Victorian Royal Commission into Family Violence, the Victorian Government is responsible for overseeing all funded family violence services obtaining Rainbow Tick Accreditation. Rainbow Tick Accreditation serves to demonstrate that services are culturally safe, inclusive and affirming for clients and employees from LGBTQ+ communities. The government has begun this work, but due particularly to the COVID-19 pandemic, there has been a delay in all services receiving accreditation. This needs to be prioritised to ensure that all services interacting with LGBTQ+ victim-survivors and perpetrators have undergone appropriate training. Additionally, there is a need for accreditation to be an ongoing process and for services to be evaluated in their response to LGBTQ+ communities. It is also important for services to see inclusive and safe practice as the end goal, not accreditation. A focus on ongoing accreditation may encourage change at the policy-level rather than the practice-level. A concerted commitment to ongoing training and education will likely alleviate some of the burdens faced by LGBTQ+ persons when they engage with mainstream family violence services, and it will ensure that practices are culturally safe.

3. Increased training for Victoria Police members, greater resource allocation to Victoria Police LGBTQ Liaison Officers (LLOs) and data collection practice reform

Given participant experiences with the police, it is critical that Victoria Police enhance training on LGBTQ+ family violence, and that such training works to dismantle simplistic and harmful assumptions about gender and sexuality. There are opportunities in the police recruitment process to assess potential new recruits' attitudes towards the LGBTQ+ community, and to exclude those who display homophobic and transphobic attitudes. Additionally, the Victoria Police Code of Practice for the Investigation of Family Violence, which currently offers useful information on LGBTQ+ family violence, should also recognise misidentification as a potential risk for this population group. Police Academy family violence training should do the same. It is also critical that all Victoria Police members have up-to-date specialist LGBTQ+ referral lists and are frequently utilising these services.

LGBTIQ Liaison Officers (LLOs) are a critical service to the family violence legal system. However, it is apparent from the findings of this research that this specialist team is under-resourced and that many LGBTQ+ persons are being denied access to them. The government should prioritise the funding of LLOs to ensure that LGBTQ+ victim-survivors and perpetrators received specialist support and guidance throughout the FVIO process. As has been highlighted elsewhere by Dwyer (2020), police rostering systems which require specialist officers to adopt generalist roles (which at times trumps their specialist role), impedes on the accessibility of LLOs. All LGBTQ+ victim-survivors and perpetrators should have access to an LLO when engaging with the police, and this may require a re-thinking of current operational and administrative approaches.

There is no available data on how many LGBTQ+ victim-survivors and perpetrators are engaging with the FVIO system. Victoria Police should be required to record LGBTQ+ identities when carrying our risk assessments (Family Violence Reports). Whilst some LGBTQ+ persons may choose not to disclose their gender and/or sexual identity, this initiative will nevertheless bridge a significant gap in current data.

4. Expand the LGBTIQ Applicant and Respondent Practitioner Service

Participant experiences with LGBTIQ Applicant and Respondent Practitioners at court were overwhelmingly positive. However, access to these services were dependent on court location and some participants therefore were unable to engage with LGBTIQ Applicant and/or Respondent Practitioners. Whilst the LGBTIQ Applicant and Respondent Practitioner Service is a state-wide service, it requires greater resourcing in order for to effectively service LGBTIQ communities in Victoria, including those in regional and rural areas.

5. Training for court staff, police prosecutors, magistrates and lawyers on the risks of misidentification for LGBTQ+ communities

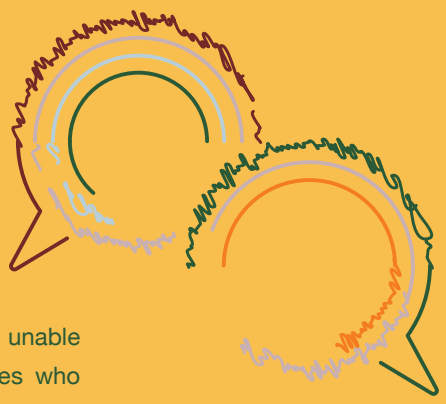
There is a need for ongoing training for all court staff, police prosecutors, magistrates and legal practitioners on LGBTQ+ family violence and of the risks of misidentification. This training needs to emphasise the risks faced by LGBTQ+ communities and encourage a shift away from adopting heterosexist and gender-normative lenses to understand family violence victimisation. Training should emphasise that consent orders should only be accepted where the court is satisfied that (first) the respondent understands the implications of consenting and (second) that undue pressure has not been placed on them to do so – especially where it is suspected that misidentification may have occurred or that the order is vexatious. Additionally, systems need to be put in place to provide redress when a victim-survivor has been misidentified (see, Family Violence Reform Implementation Monitor, 2021).

6. Review into the FVIO application process

The State Government should fund a review into the current FVIO application process to identify opportunities for reform to better protect victim-survivors of family violence from experiencing legal systems abuse via vexatious FVIO applications.

7. Commitment to community-led response initiatives and continued investment in non-legal system specialist services

Many participants continue to engage with the FVIO system because they see it as the only option available to them. This is despite many having hesitations about engaging with the legal system. There is a need to consider how best to provide alternatives to legal system intervention for LGBTQ+ persons experiencing family violence. This may include restorative and/or therapeutic justice options, run by and for LGBTQ+ communities. Increasing funding for health-focused services such as Thorne Harbour Health will allow LGBTQ+ communities to have better access to legal system alternatives. Further, such initiatives need to be accompanied by community-led family violence prevention education.

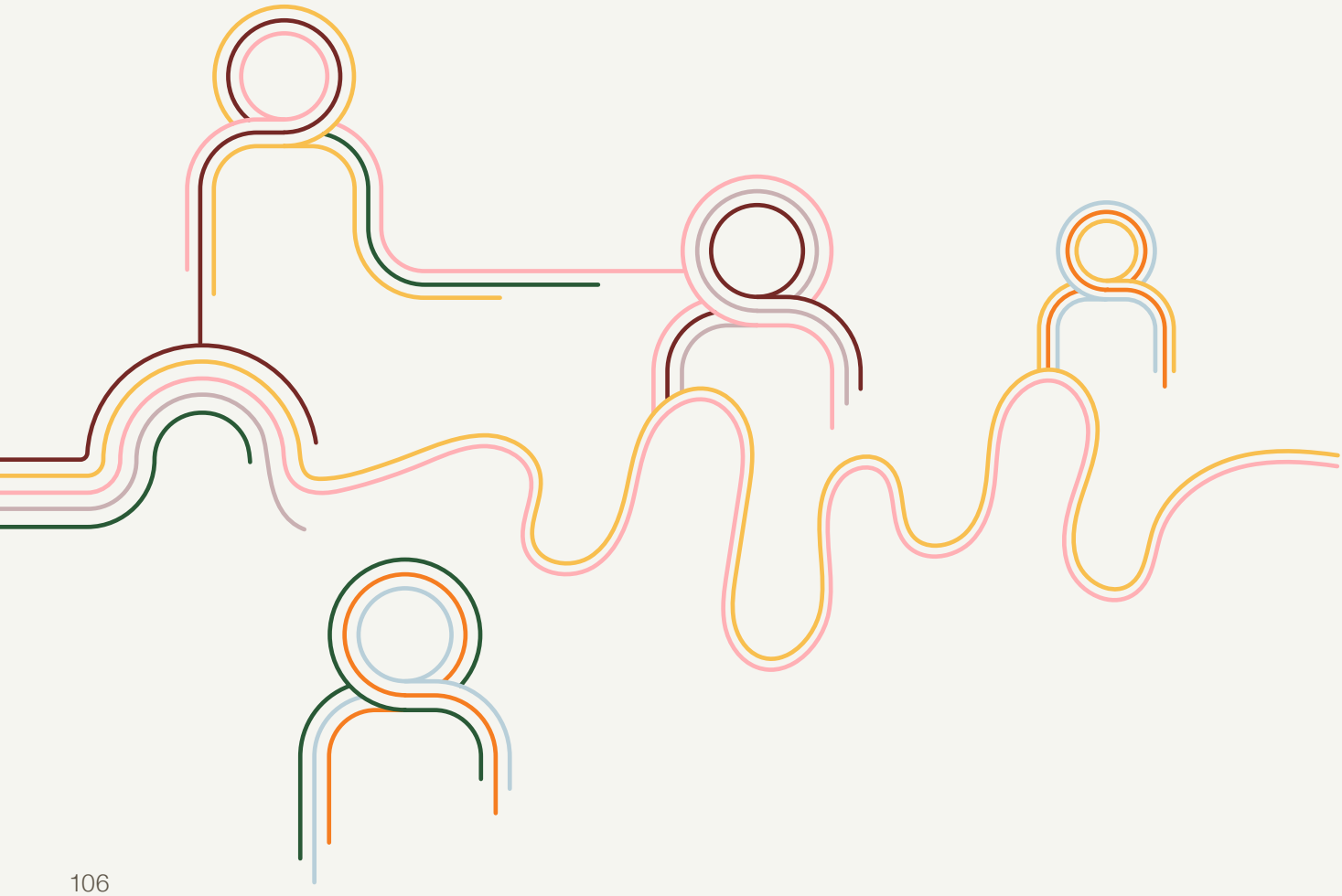


8. Further research on how specific marginalised LGBTQ+ communities experience the FVIO system

A key limitation of this study, which was narrow in its scope, is that it was unable to provide in-depth insights into how multiply marginalised communities who also belong the LGBTQ+ communities experience the FVIO system. Decades of research has demonstrated that experiences of family violence and barriers to accessing formal help-seeking avenues take different forms for different groups of people. We recognise, for instance, that LGBTQ+ victim-survivors also experience discrimination on the grounds of 'race' or ethnicity, migration status, class, age and ability. There is a need for further research that specifically considers these factors and how they impact on engagement with the FVIO system.

13 Conclusion

This report has presented the first in-depth insights into how LGBTQ+ family violence victim-survivors are engaging with intervention order systems. Whilst based in Victoria, the research has broader implications for Australian states and territories and international jurisdictions also utilising intervention systems in their response to family violence. Whereas a growing body of research has explored LGBTQ+ experiences of family violence and barriers to formal reporting, to the best of our knowledge, no research has considered LGBTQ+ engagement with this specific legal response. The findings reveal that LGBTQ+ victim-survivors face many of the barriers to accessing safety via intervention order systems that cisgender heterosexual women face; but they also face different and unique microaggressions as they seek safety and protection from intimate partners and family members. The findings serve as critical prompt for further data-led and empirical research on how intervention order systems respond to LGBTQ+ family violence. They also bring home the importance of concerted, ongoing, affirming, and culturally safe practice within the law and the broader family violence sector when responding to LGBTQ+ family violence.



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15 Appendix

15.1 Survey questions

The survey had four key blocks. **Block 1** asked about the participant's basic demographic information and asked if they were listed as an affected family member and/or a respondent. Demographic questions presented in Block 1 are shown in Chapter 5.

Block 2 was presented to those who had been listed as an affected family member, and **Block 3** was presented to those who had been listed as a respondent. Below, we present the branching for each of these blocks. **Block 4** was presented to all participants. The survey took participants approximately 30 minutes to complete, and participants were able to skip questions at any time.

BLOCK 2: AFFECTED FAMILY MEMBERS

- **Was the application listing you as the AFM private or police-initiated?**
  - » Yes
    - Did you want the police to make the application on your behalf?
      - » Yes
        - Why did you support the order?
        - Who did you want the order to protect you from?
        - What impact did you hope an FVIO would have on your safety?
      - » No
        - Why didn't you want the police to make the application on your behalf?
        - What reasons did the police give for the application?
        - Who did the police apply for the order against?
  - » No
    - Why were you seeking an FVIO and who were you seeking it against?
    - Did someone help you with the application?
    - What impact did you hope an FVIO would have?
    - Had you previously asked the police to make an application on your behalf?
      - » Yes
        - Please describe the response of the police when you previously asked them to make an application
- **Did the courts grant an interim order protecting you?**
- **Did the court grant a final order protecting you?**
  - » Yes
    - Did the perpetrator consent to the order?
    - Were you happy with the terms of the order? Why/why not?
    - How has the order being granted impacted on your safety and wellbeing?
    - Has the perpetrator breached the order?
      - » Yes
        - Have you reported the perpetrator for breaching the order?
          - » No
            - Why not?
        - Has the perpetrator ever been charged with breaching the order?
          - » Yes
            - Can you talk about the circumstances in which the perpetrator was or was not charged?
  - » No
    - How do you think being denied an order has impacted on your safety and wellbeing?

BLOCK 3: RESPONDENTS

- **Was it the police who made the application against you or did the other person apply directly at court?**
  - » The police
    - When the police initiated the application against you, did they carry out an assessment of your risk?
    - Did the police interview you and the other party separately?
    - If relevant, did the police provide you with an interpreter?
    - What reasons did the police give for applying for an FVIO against you?
  - » Private application
    - Why did the other person seek an FVIO against you?
    - Do you think that the FVIO/application made against you was appropriate? Why/why not?
- **Was an interim order made against you?**
- **Was a final order made against you?**
  - » Yes
    - Did you consent to the order being made? Why/why not?
    - In what ways has the order made against you impacted on your life and safety?
    - Have you ever faced criminal charges for family violence, including for breaching an FVIO?
  - » No
    - If known, why did the courts not grant an order against you?

BLOCK 4: ALL PARTICIPANTS

- What impact has police involvement had on your safety and wellbeing?
- Would you contact the police again for protection against family violence
- Have you had interactions with Victoria Police LGBTIQ+ Liaison Officers? If yes, please tell us about these experiences.
- Based on your experiences, do you think that Victoria Police have a good understanding of family violence experienced within LGBTQ+ relationships and/or family violence perpetrated against LGBTQ+ persons? Please explain your answer.
- What impact have support services had on your safety and wellbeing?
- Have you had access to specialist support services? If yes, please tell us about these experiences.
- Based on your experiences, do you think that family violence support services have a good understanding of family violence experienced within LGBTQ+ relationships and/or family violence perpetrated against LGBTQ+ persons? Please explain your answer.
- If you have had access to legal presentation, was your representation a public lawyer (e.g., Victoria Legal Aid, duty lawyer at court or lawyer from a community legal centre)

or a private lawyer (you had to pay the lawyer to represent you)?

- What impact have lawyers had on your safety and wellbeing?
- Based on your experiences, do you think that lawyers have a good understanding of family violence experienced within LGBTQ+ relationships and/or family violence perpetrated against LGBTQ+ persons? Please explain your answer.
- How would you describe your experiences and interactions with court staff, such as registrars and applicant/respondent support workers?
- Did you feel safe at court? Why/why not?
- How would you describe your experiences and interactions with judges/magistrates during the FVIO process?
- What impact have judges/magistrates had on your safety and wellbeing?
- Based on your experiences, do you think that Victorian judges/magistrates have a good understanding of family violence experienced within LGBTQ+ relationships and/or family violence perpetrated against LGBTQ+ persons? Please explain your answer.
- What is your perspective on the effectiveness of Victoria's FVIO system in responding to family violence in LGBTQ+ relationships and/or family violence perpetrated against LGBTQ+ persons?
- In what ways can the system improve to better respond to LGBTQ+ persons?
- Would you seek assistance from the FVIO system again? Please explain your answer.
- Is there anything else you would like to add about your experiences with the FVIO system and/or your perceptions of the FVIO system as a tool to address family violence?

15.2 Interview questions

Interviews adopted a semi-structured format. The following questions were asked of all participants, with follow-up questions asked depending on participant responses. Interviews ran for approximately 45 minutes.

1. Can you please tell me about how you came to be engaged with the family violence intervention order system?
2. What has been the impact of the FVIO process on your safety and wellbeing?
3. What have your experiences been with the following: police, support services, lawyers, magistrates?
4. What are your views on the effectiveness of the FVIO system in responding to family violence experienced by LGBTQ+ persons?
5. In what ways can the system improve to better respond to family violence experienced by LGBTQ+ persons?
6. Is there anything else that you'd like to discuss in relation to your experiences with and perceptions of the FVIO system?