

WHEN _____

DO I GET _____

TO TELL _____

MY STORY? _____

Agency and Resistance in Family Violence
Intervention Order Narratives



Community
driven justice.



LA TROBE
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WEstjustice

When do I get to tell my story?

Agency and Resistance in Family Violence Intervention Order Narratives

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The authors recognise the sovereignty of the Woi Wurrung (Wurundjeri) and Boon Wurrung peoples of the Kulin Nation as the custodians of the land on which this research was undertaken. This sovereignty has never been ceded. We pay respect to Woi Wurrung and Boon Wurrung Elders past and present.

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Agency and Resistance in Family Violence Intervention Order Narratives
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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
ABBREVIATIONS	6
ACKNOWLEDGEMENTS	6
INTRODUCTION	7
RESEARCH BACKGROUND	8
RESEARCH DESIGN	10
RESEARCH SAMPLE	11
DATA ANALYSIS	13
Overview of Linguistic Analysis	13
Looking at the subjects in the text	14
Looking at predicates in the text	15
Harm in police applications	17
Resistance in AFM applications	17
Reflecting on the power of AFM resistance	18
Relationships and AFMs in police applications	20
SUMMARY	23
RECOMMENDATIONS	24
APPENDIX – DETAILED DATA	25

EXECUTIVE SUMMARY

This report outlines the findings from a research project conducted by a team of academics from La Trobe University and practitioners from WEstjustice and Fitzroy Legal Service. The research investigated representations of the agency and resistance of women as Affected Family Members ('AFMs') in applications for Family Violence Intervention Orders ('FVIOs'), to enhance knowledge about the relationship between language and gendered power dynamics in the legal system.

The aims of the research were to:

- Understand the role and significance of language in recognising women's agency and resistance to family violence in the FVIO process
- Identify whether there is a relationship between the representation of women's agency and the FVIO applicant (i.e., police or the AFM)
- Explore how police frame harm in FVIOs to enhance scrutiny of and frameworks for accountability in police FVIO processes
- Generate knowledge that can be used to improve women's experiences of family violence legal processes
- Build capacity for the community legal and social services sectors to respond to, advocate for and provide support to women who are seeking FVIOs

The research involved the collection of a sample of 20 anonymised FVIO applications with the consent of AFMs. Half of the applications were authored by police; the other half were written by AFMs or their advocate. The narrative components of the applications were subject to quantitative analysis by a linguistics scholar and qualitative analysis by socio-legal scholars.

The process of analysing the narratives in FVIO applications highlighted important questions about how these narratives are crafted; when and to what degree they might be altered during the application process; and for what purpose. For instance, anecdotal evidence suggests that court registrars play a significant role in editing, rewriting, and restructuring the narratives in AFM applications. However, registrars are largely invisible in this process since there is no record of their contributions or changes to AFM's narratives.

This leads to our overarching finding:

- There is no clear, transparent, or easily accessible map of the process of applying for an FVIO for anyone involved, from AFMs through to Magistrates.

The lack of a clear map makes the process of applying for an FVIO opaque. It is difficult to understand what information is important at each stage of the process, and why, and the various roles of the different actors involved. The absence of a map also prevents practitioners and researchers from understanding the level of consistency in the application process for AFMs. Improving transparency and access to information about the FVIO application process would improve AFMs access to justice.

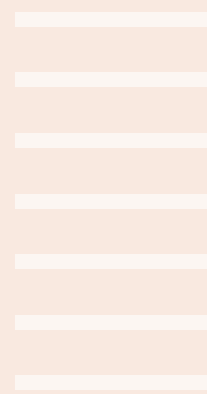
Additional and emerging findings from this research include:

- AFMs who write their own applications demonstrate agency and expertise in the narration of their lived experience of family violence.
- When an AFM applies for an FVIO, they place the focus squarely on the respondent, which indicates that AFMs may be using the narrative component of the FVIO application to name and 'call out' the violent behaviours of the respondent.
- Compared to police authored applications, AFM authored applications devote a greater proportion of the narrative text to documenting the harms caused to them by the respondent.
- In cases where the AFM does not consent to a police application for an FVIO, the police narrative is more likely to emphasise the actions of the AFM to resist the violence, and to involve the police in the matter, than if the AFM consented to the application.
- Police applications for FVIOs without the consent of AFMs highlight the capacity for state agents to replicate and extend the effects of gendered violence, rather than remedy it. Pursuing a legal order for the protection of a victim-survivor against their wishes risks further diminishing their agency and autonomy. This practice may be perceived or experienced as paternalistic or coercive.
- Police applications for FVIOs without consent also indicate that physical separation and legal involvement are not necessarily outcomes that all victim-survivors want when seeking help for DFV.

- There is emerging evidence of injustices in the FVIO system that may disproportionately impact CALD communities, which may reflect a racialised pattern of 'paternalistic policing' in the context of DFV.

These findings inform the recommendations for change and future directions that are provided at the end of this report.

➤ **AFMs who write their own applications demonstrate agency and expertise in the narration of their lived experience of family violence.**



ABBREVIATIONS

AFM	Affected Family Member
CALD	Culturally and Linguistically Diverse
CLC	Community Legal Centre
DFV	Domestic and Family Violence
FLS	Fitzroy Legal Service
FVIO	Family Violence Intervention Order
RESP	Respondent to a FVIO application
WJ	WEstJustice

ACKNOWLEDGEMENTS

The authors would like to thank the clients of WEstjustice and Fitzroy Legal Service who generously agreed to participate in our study; Jessica Velasquez Urribarri and Kim Lah for their research assistance; Maddocks; La Trobe University Research Office; and the Victorian Law Foundation who provided us with a Knowledge Grant that funded the research.

INTRODUCTION

In 2016 the Victorian Royal Commission into Family Violence made 227 recommendations for change to the Victorian parliament, the last of which were reported to have been implemented on 28 January 2023.¹

Despite the interventions made over the last six years, the latest data released by the Victorian Crimes Statistic Agency demonstrates that family violence continues to increase.²

One in three women will experience some form of gender-related violence over the course of their lifetimes.³ The Family Violence Intervention Order (FVIO) system is a central mechanism in the legal regulation of family violence, which aims to protect victim-survivors or 'affected family members' (AFMs) from those causing them harm (respondents). The FVIO itself is a written document, which is produced and authorised through the courts following an application by the police, or by an AFM or their representative (such as a lawyer or advocate). As a textual artefact, it involves the use of language to describe and craft narratives of violence and abuse, perpetration, and victimisation.⁴

Crafting a narrative of violence in an application for an FVIO is a crucial moment in a victim-survivor's engagement with the legal system, and yet relatively little is known about it. While carrying out this project, one of the legal practitioners reflected that the most common question she is asked by victim-survivors who are embarking on the process of applying for an FVIO is: when do I get to tell my story?

This question encapsulates how important it is for victim-survivors to have the ability to describe the violence they have experienced in their own words. Supporting victim-survivors to take control of their own narratives has the potential to challenge the diminishing effects of domestic and family violence (DFV). Denying victim-survivors this opportunity risks compounding their marginalisation and disempowerment, which becomes an issue of communicative justice. The concept of communicative justice acknowledges the need of individuals to have voices that support their 'full citizenship and personhood'⁵ and allow them to participate in 'fair communicative practices, particularly after periods of direct or structural violence'.⁶

The significance of the narrative in FVIO applications also extends beyond the power of storytelling; the narrative forms the basis of the evidence for the matter before the court.

Between June 2021 and June 2022, there were almost 50,000 finalised FVIO applications in Victorian courts, compared to roughly 40,000 each year since 2017.⁷ Most applications are successful and result in a FVIO (74%). A much smaller proportion of applications are withdrawn (13%) and even fewer are struck out (8%).

AFMs and respondents listed on FVIO applications are most likely to be domestic or former partners (41%) or in intimate personal relationships (22%). Three quarters of respondents are recorded as adult men (76%). AFMs are most likely to be recorded as children and young people under 18 (43%) or adult women (42%). Only 3% of AFMs are reported to have required an interpreter.

Three-quarters of FVIO applications in Victoria are initiated by police (74.8%). In these types of applications, police write the narrative of violence in place of the victim-survivor. This is concerning because of the issues of communicative justice noted above. More broadly, police are often ill-equipped to respond to DFV. Police-centred responses can exacerbate violent dynamics or expose victim-survivors to the risk of criminalisation, such as through misidentification of the predominant aggressor in a DFV relationship, or through pursuing charges or arrests for outstanding warrants or other criminal matters (such as drug possession).⁸

¹ State of Victoria, *Royal Commission into Family Violence: Summary and Recommendations* (Parliamentary Paper No. 132 March 2016).

² Victorian Crimes Statistics Agency, Family Violence Data Portal: <https://www.crimestatistics.vic.gov.au/family-violence-data-portal>

³ Julie Schroeder et al, 'Introduction: International Response to Domestic Violence' (2017) in Diana Peterson and Julie Schroeder (eds) *Domestic Violence in International Context* (Routledge, 2019).

⁴ Jill Adams, 'The civil restraining order application process: Textually mediated institutional case management' (2009) 10(2) *Ethnography* 185.

⁵ Jilly Boyce Kay, *Gender, Media and Voice* (Palgrave Macmillan, 2020) 1-25.

⁶ Alice Neeson, 'Communicative Justice and Reconciliation in Canada' (2019) 31(2) *New England Journal of Public Policy*, Article 10.

⁷ All statistical data on this page is from the Victoria Crime Statistics Agency, 2022: see <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>

⁸ See Heather Douglas, Emma Buxton-Namisykn and Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations, Racialised Realities* (Palgrave, 2019); Emma Russell, Bree Carlton and Danielle Tyson, "'It's a Gendered Issue, 100 Per Cent': How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage' (2022) 11(3) *International Journal for Crime, Justice and Social Democracy*, 107.

RESEARCH BACKGROUND

Research suggests that legal systems can exacerbate victim-survivors' trauma and compromise their safety. This can occur through confusing bureaucratic processes, conflicting expectations, a lack of support, and a perceived pressure to 'prove' the abuse when giving statements.⁹ The risks of legal involvement for victim-survivors also include 'systems abuse,' which refers to perpetrators' use of legal systems to further their abuse. Systems abuse can occur through contact with child protection, police, lawyers, and judges.¹⁰

Research conducted in Australia and Canada has found that women's experiences with legal systems are shaped by race and class, and that women who have lower levels of English language proficiency encounter difficulties in access to justice.¹¹ First Nations women experience discrimination at all stages of the legal system because of structural racism and the settler colonial design of legal institutions.¹²

Women's experiences with the law challenges common assumptions about intimate partner violence. For instance, women report that non-physical abuse is the most difficult form to deal with, yet in their experience, police rarely charge breaches for this. Moreover, separation is not a straightforward 'solution,' as is frequently assumed, nor is it a singular moment in time. Rather, separation is often fluid and non-linear, and women often experience continuing coercive control post-separation.¹³

Prior research on FVIO applications suggests that the way in which the narrative of violence is crafted – and the degree to which it reflects normative legal language, structure, and content – varies according to who wrote the application. This, in turn, impacts the outcome of the application.¹⁴

One study conducted in Queensland, in which 418 protection order applications submitted between 2011 and 2014 were examined, found that applications prepared by police were more likely to be successful.¹⁵ This difference can be explained in large part by the distinct kinds of 'narratives' that are being told within FVIO applications.¹⁶ In this study, the researchers divided the narratives provided in the applications into three distinct classes: strong legal; weak; and detailed emotional. Two-thirds of the applications they examined contained 'strong legal' narratives. These applications were more likely to be prepared by police and to be successful.

A smaller study conducted in New South Wales similarly found that AFM's narratives in protection order applications used more emotional language (especially about fear).¹⁷ AFM narratives were often non-linear or non-sequential, missing specific information and details about incidents of violence, such as dates and times, or only included the most recent incident, rather than evidencing a pattern of abuse.¹⁸

➤ Research conducted in Australia and Canada has found that women's experiences with legal systems are shaped by race and class, and that women who have lower levels of English language proficiency encounter difficulties in access to justice.

Prior research therefore highlights the potential for inequities in access to justice in the FVIO system to hinge on language and narrative accounts. However, to the best of our knowledge, no studies of FVIO application narratives have been conducted in Victoria specifically. This is a notable research gap, especially since the landmark Royal Commission into Family Violence in this state in 2016 advocated for the development of "a common language" of family violence among the various agencies involved in its monitoring and prevention.¹⁹

The inequities that arise because of stylistic differences in the narratives of violence provided to the court in intervention order applications has prompted a U.S. researcher to suggest that the requirement for a narrative could be eliminated from the intervention order application entirely.²⁰ Instead, she suggests, it could be replaced with a checklist system that lists various forms of victimisation, which could reduce the risk of legal outcomes being impacted by inequalities like access to education or legal representation.

Australian researchers have challenged the idea of an application checklist, arguing that although removing the narrative requirement from the process may create a more uniform and thus formally fairer system, there may be unintended consequences. Eliminating narratives might disguise the diversity of victim's experiences and perspectives, and the complexity of the violence itself, and instead privilege the "representational tropes and stereotypes" that magistrates find more persuasive.²¹ In addition, a checklist model does not give victim-survivors the opportunity to articulate their experience, which may contribute to their silencing.

⁹ Heather Douglas, *Women, Intimate Partner Violence and the Law* (Oxford University Press 2021); Gillis et al., 'Systemic obstacles to battered women's participation in the judicial system: When will the status quo change?' (2006) 21(5) *Violence Against Women* 611.

¹⁰ Heather Douglas (n 7).

¹¹ Gillis et al (n 7).

¹² Douglas (n 7); Heather Douglas and Robin Fitzgerald, 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41; Emma Buxton-Namismyk, 'Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination' (2022) 62(6) *The British Journal of Criminology* 1323.

¹³ Ibid.

¹⁴ Robin Fitzgerald and Heather Douglas, 'The Whole Story: The Dilemma of the Domestic Violence Protection Order Narrative' (2020) 60(1) *British Journal of Criminology* 180; Alesha Durfee, 'Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders' (2009) 4 *Feminist Criminology* 7; Jane Wangmann, 'Incidents v Context: How Does the NSW Protection Order System Understand Intimate Partner Violence?' (2012) 34 *Sydney Law Review* 695.

¹⁵ Fitzgerald and Douglas (n 12).

¹⁶ Robin Fitzgerald and Heather Douglas (n 12); Alesha Durfee (n 12); Jane Wangmann, (n 12).

¹⁷ Jane Wangmann (n 12).

¹⁸ Ibid.

¹⁹ State of Victoria, Royal Commission into Family Violence: Summary and Recommendations (Parliamentary Paper No. 132, March 2016), 102. <https://www.parliament.vic.gov.au/file_uploads/1a_RFV_112ppA4_SummaryRecommendations.WEB_DX0yLhqv.pdf>

²⁰ Alesha Durfee (n 12).

²¹ Robin Fitzgerald and Heather Douglas (n 12), 193.

RESEARCH DESIGN

This research project investigated representations of women’s agency and resistance in applications for FVIOs to enhance knowledge about the relationship between language and gendered power dynamics in the legal system. The research was undertaken by a team of academics from La Trobe University and practitioners from WEstjustice and Fitzroy Legal Service.

After obtaining approval from the La Trobe University Human Ethics Committee, CLC practitioners obtained a sample of 20 anonymised FVIO applications with the AFM’s consent. Participation criteria required the AFM be a self-identified woman, over the age of 18 who had recently filed an FVIO application with the Victorian Magistrates’ Court, or where an application had been filed by the Victoria Police naming the woman as an AFM. Half of the applications in the sample were authored by police; the other half were written by AFMs or their advocate. All of the respondents were listed as men and all but two were reported to be either the former or current intimate partner of the AFM.

The narrative components of the applications were then subjected to a combination of close textual analysis, including quantitative analysis, and narrative analyses. Attention was directed towards identifying the ways in which women act to resist violence or are described as resisting violence in these texts.

During the analysis phase, it became apparent that the narratives available to the CLCs were not the original texts written by AFMs. Rather, there were indications that the texts had been edited with content removed, likely by a registrar to facilitate use by magistrates and court personnel. When narratives are reduced in size and scope, AFMs are sometimes asked by the magistrate to provide further and better particulars later in the process. We have an understanding that changes are made to the narrative sections of the applications, but we are not sure how or when or why, and there is an overall lack of transparency about this process. As a result of these interventions, we cannot be confident of the full authorship of the AFM narratives we analysed, or the extent to which they resemble the AFM’s originally crafted narrative for the purpose of securing an FVIO.

RESEARCH SAMPLE

Fitzroy Legal Service and WEstjustice collected ten FVIO applications each, with equal representation of police-authored and AFM-authored applications. The police applications are distinguished between those with AFM consent (POL+) and those without AFM consent (POL-).

Table 1: Summary of applications for FVIOs reviewed in this research

FLS	WJ
FLS1 AFM**	WJ1 POL+
FLS2 AFM	WJ2 POL-**
FLS3 POL-	WJ3 POL-
FLS4 AFM	WJ4 AFM
FLS5 AFM	WJ5 AFM
FLS6 POL+	WJ6 AFM
FLS7 POL+	WJ7 POL+
FLS8 POL+	WJ8 POL+
FLS9 AFM	WJ9 AFM
FLS10 POL+	WJ10 AFM

AFM AFM application

POL+ Police application with consent

POL- Police application without consent

** Some complexity (FLS 1 begins as AFM narrative but is interrupted and continues in the 3rd person; WJ2 begins with consent that is withdrawn later in the process)

At the time of data analysis, there were a high proportion of adjournments in the sample, especially amongst AFM authored applications. This decreased the value of analysing the relationship between application type and outcome, because the outcomes are not yet finalised by the court. Listed outcomes in the sample were:

- ▶ Adjourned with interim IO = 8
- ▶ Final consent orders = 8
- ▶ App withdrawn = 2
- ▶ Orders varied = 1
- ▶ Final order = 1

We also considered the relevance of AFM's English language proficiency because the two AFMs in the sample who were not fluent or native English speakers had IOs initiated by police on their behalf without their consent:

- ▶ Native English speakers = 14
- ▶ Non-native but fluent English speakers = 4
- ▶ Moderate English proficiency = 1
- ▶ Poor English proficiency = 1

▶ **The two AFMs in the sample who were not fluent or native English speakers had IOs initiated by police on their behalf without their consent.**

DATA ANALYSIS

Data was de-identified by personnel in the CLCs before being shared with the researchers. Close textual analysis, including quantitative analysis, and narrative analyses were completed. Preliminary findings were shared with representatives from Fitzroy Legal Service and WEstjustice to provide an opportunity for the whole team to reflect on areas of particular interest and significance.

Our focus in this research has been on identifying how women act to resist violence or are described as resisting violence in these texts. Coates and Wade²² note that language is used to:

1. conceal violence
2. obscure and mitigate offenders' responsibility
3. conceal victims' resistance and
4. blame and pathologize victims

We are particularly interested in identifying strategies used by AFMs to resist these processes within applications for FVIOs. We are also concerned with conceptions of harm in these narratives and the different ways in which police and AFM authors approach the problem of identifying patterns and occasions of harm.

Overview of linguistic analysis

The data we are concerned with here is drawn from the sample of 20 applications for FVIOs. This amounts to 20 texts containing 401 'sentences' (defined in relation to the punctuation used within the texts) and 633 main clauses. Each main clause is analysed to identify the subject of the clause and the nature of the predicate. Categorising and counting the types of subjects in the texts provides insights into who is prominent in the narratives used to apply for FVIOs. The predicate contains the main messages of the clause (the main chunks of information in the sentence). Categorising and counting the types of predicates in the text allows us to understand better what key topics or messages are being conveyed.

The following examples of clauses from the sample show the subject highlighted in pink and the predicate in blue:

THE RESP IS ALSO FREQUENTLY KEEPING ME UNDER SURVEILLANCE BY LOOKING OVER MY SHOULDER WHILST I AM ON MY COMPUTER OR PHONE AND LISTENING TO PRIVATE PHONE CALLS.

RESP BECAME UPSET AND JEALOUS, THROWING PIZZA BASES, CHEESE AND KIDS TOYS AT THE AFM (WHO WAS HOLDING THEIR 9MO SON) WHILST ALSO CALLING HER NAMES.

All the quoted materials from the applications recorded in this Report, appear in ALL CAPITALS. The research team worked from the application documents as they were submitted to the Court. In those court documents, the narrative section is set out in ALL CAPITALS. It is arguable that this presentation has implications for how the narratives are interpreted by Magistrates, and for this reason the capitalization has been replicated here.

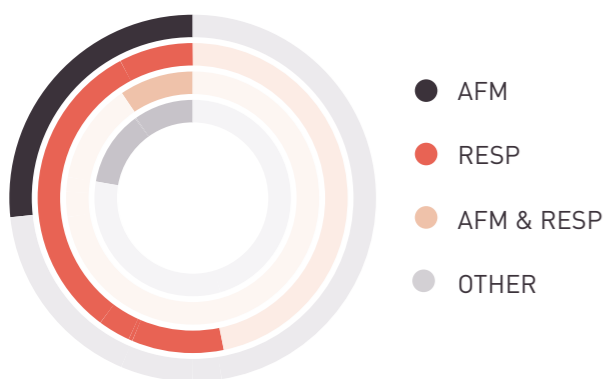
²² Linda Coates and Alan Wade, 'Language and violence: analysis of four discursive operations', (2007) 22(7) Journal of Family Violence 511.

Looking at subjects in the text

In thinking about who is important in the text, we can take the most frequent mention of the subject as an indicator of the person in focus in the narrative. In this analysis the focus is on the AFM and the respondent (RESP). On occasion where the narrative deals with the relationship between the AFM and the respondent and where there is mention of children related to them, the AFM and the respondent tend to share the subject role.

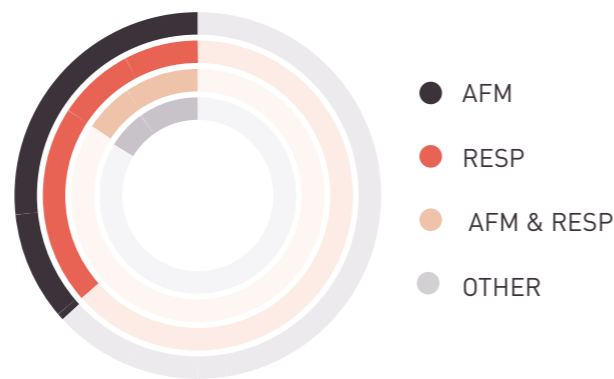
Figure 1 shows that where the AFM takes the initiative to apply for a FVIO, AFM place the focus squarely on the respondent. This is consistent with an approach to using the narrative in the application for an FVIO to call out the violence behaviours of the respondent.

Figure 1: Subjects in AFM authored applications for FVIOs



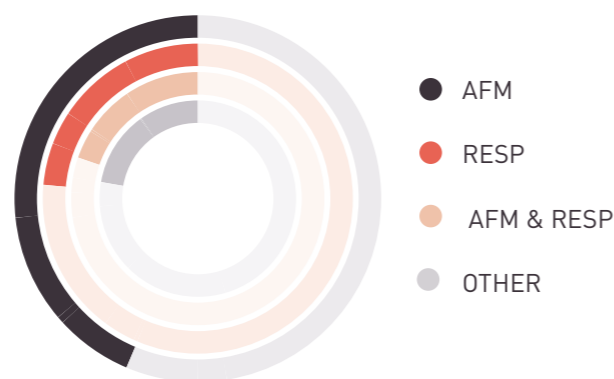
Where the police apply with the consent of the AFM (Pol +AFM), as shown in Figure 2, the focus falls roughly equally on the AFM and the respondent.

Figure 2: Subjects in Police authored applications for FVIOs (AFM consenting)



In contrast, the focus in applications for FVIOs where the AFM has not consented (Pol -AFM) the focus falls more heavily on the AFM, as indicated in Figure 3.

Figure 3: Subjects in Police authored applications for FVIOs (AFM not consenting)



When the RESP does not appear as a subject in a narrative, and is not the focus, this suggests that responsibility for the violence described is not being situated with the RESP. This is part of the process that diminishes the responsibility of perpetrators of gendered violence. This can also reduce the apparent gravity of the violence. Sometimes it resituates responsibility with the AFM.

Looking at predicates in the text

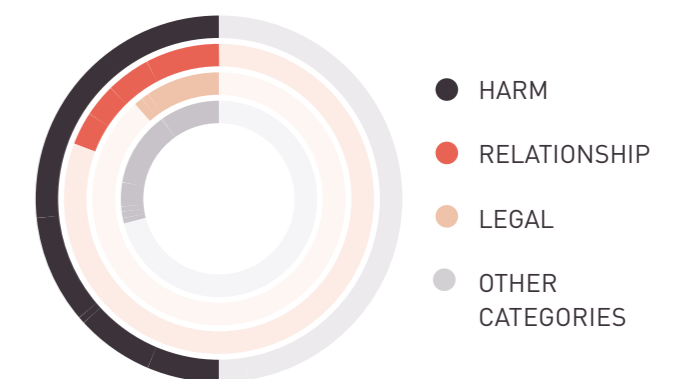
Predicates carry the main information being communicated in the text. By categorising narratives and considering their distribution, we can see what kinds of statements are being made by the different authors of applications for FVIOs.

The first step in this process is to code the predicate types. In this analysis, the following predicate types have been used. The coding system is based on a preliminary analysis of the themes that are present in the narratives. This list is arranged according to the frequency of the predicate type:

- risk – evaluations of risk, identification of risk factors: alcohol and/or drug related, possession of weapons, escalating behaviours
- resist – AFM attempt to assert boundary, take steps to establish safety
- account – a report of things that have happened – typically introduced by ‘stated’ or ‘disclosed’ and occurring in police authored narratives
- residual – residual category not elsewhere classified
- argue – mentions of arguments between AFM and respondent
- money – statements about who pays for what (theft is dealt with under harm)
- harm – physical, emotional, psychological, financial and social harms (including attempts to harm – behaviour as a euphemism for harmful activities)
- relationship – status and changes in status or interpersonal relationships and also relationships to institutions such as work/school
- legal – references to legal status and actions, including involvement of other agencies such as child protection
- know – statements of belief, knowledge, understanding and evaluation
- move – position, movement through space (go to mother’s house, move back from overseas, arrive home...)
- contact – refers to messaging, phoning, blocking calls etc
- feel – descriptions of someone’s emotional states
- risk – evaluations of risk, identification of risk factors: alcohol and/or drug related, possession of weapons, escalating behaviours

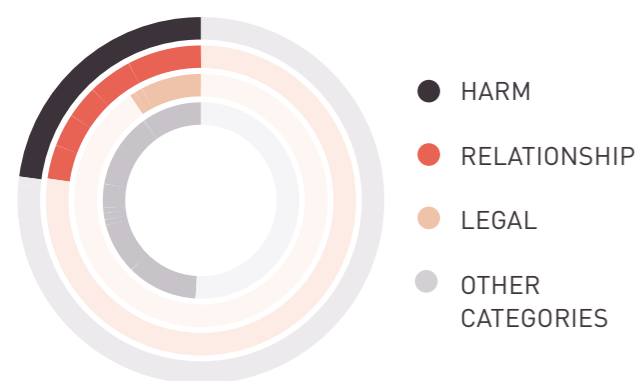
- risk – evaluations of risk, identification of risk factors: alcohol and/or drug related, possession of weapons, escalating behaviours
- resist – AFM attempt to assert boundary, take steps to establish safety
- account – a report of things that have happened – typically introduced by ‘stated’ or ‘disclosed’ and occurring in police authored narratives
- residual – residual category not elsewhere classified
- argue – mentions of arguments between AFM and respondent
- money – statements about who pays for what (theft is dealt with under harm)

Figure 4 shows clearly that AFM authors of applications for FVIOs invest considerable effort in documenting the harms caused to them by the respondents and then to a lesser but still significant extent in describing their relationship with the respondent.



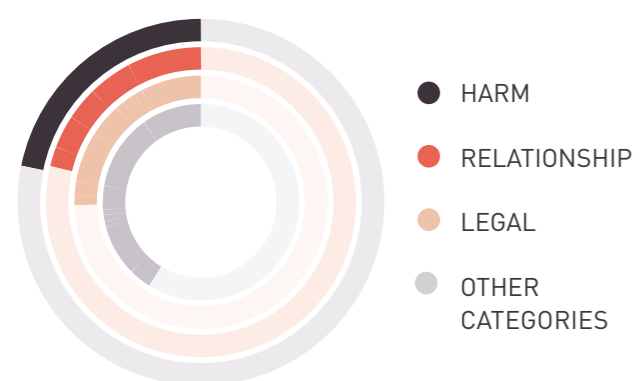
In contrast, police authored applications for FIVOs that were made with the consent of the applicant have a more balanced focus on the harm and the relationship). This is shown in Figure 5.

Figure 5: Predicates in Police authored applications for FVIOs (AFM consenting)



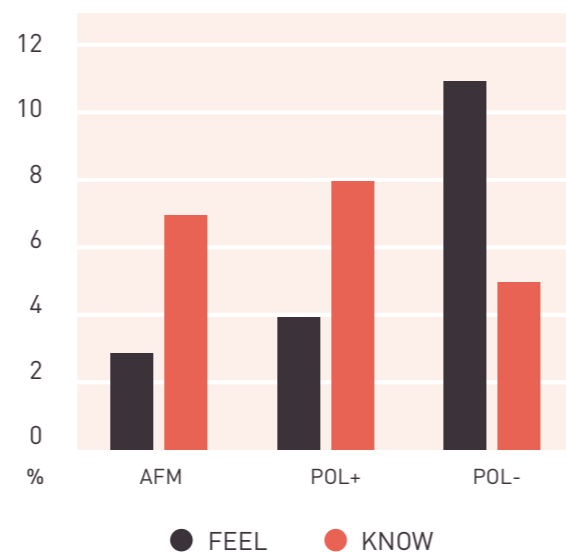
Legal matters feature most strongly in the applications from police where the AFM has not consented to the order, with harms represented at a similar rate. This is shown in Figure 6.

Figure 6: Predicates in Police authored applications for FVIOs (AFM not consenting)



Although the numbers are small within an already limited sample, it is interesting to note the contrast between knowledge and feelings in the data. Whereas AFM's knowledge is reported twice as often as their feelings in the AFM authored applications and the police authored applications with AFM consent, the converse is true in the police authored applications that did not have AFM consent. This is consistent with findings elsewhere relating to the characterisation of women in the context of domestic violence as more feeling than thinking.²³ These findings are presented in Figure 7.

Figure 7: Distribution of assertions of knowing and feeling by author type



²³ Cara Penry Williams and Tonya Stebbins, 'A common language and shared understanding of family violence? Corpus-based approaches in support of system responses to family violence' (2023) 18(1) *Corpora*, forthcoming.

Harm in police applications

Across the ten applications drafted by police, a wide variety of different forms of 'harm' are documented, ranging from verbal aggression (name calling, non-specific threats) to verbal threats constituting criminal offences ('I will have you killed'); threats of property damage and actual property damage; and actual physical assault including examples of conduct sufficient to satisfy the requirements for 'causing injury' offences in the *Crimes Act*. The police also document a range of emotional abuse including conduct that likely would meet the requirements for coercive control under the *Crimes Act*.

In the ten applications we looked at, the police did not appear to prioritise particular forms of harm when applying for a FVIO, and risk assessment appeared to be based on escalation of conduct rather than, for instance, actual physical injury. Interestingly, the kind of harm described in the applications seemed likewise not to make a difference between applications with consent, and the three applications where the AFM did not consent. In other words, the police made applications even if the harm did not appear to be 'serious' in the criminal sense (for instance, verbal aggression short of an actual threat, and property damage without the presence of physical injury) where, in a non-consensual application, we might have expected more serious forms of harm to form the basis of the risk assessment.

However, it was also evident, in analysing the police applications, that risk assessment was to some extent based on the quantity of instances of harm. Police applications list all the different forms of harm that have been experienced, and in most cases provide specific examples of those forms of harm. Police put forward applications which recorded one instance of harm, and applications with many different forms of harm. While police did not appear to prioritise applications with multiple examples of harm, it does appear that the more examples listed, the stronger the sense of the risk that is portrayed.

However, it is also the case that whenever a non-criminal harm is listed in a police narrative, it is accompanied by a disclaimer that no 'real' harm has been caused, despite the presence of a list of actions that appear to have been harmful:

THERE HAVE NOT BEEN ANY PROPERTY DAMAGE OR THREATS DISCLOSED, ONLY A LOT OF NAME CALLING FROM THE RESP. (FLS3 POL-)

THERE WAS NO DIRECT THREATS, VIOLENCE OR INJURIES TOWARDS THE AFM. (FLS10 POL+)

Resistance in AFM applications

In applications for FVIOs, there is evidence of language being used to document violence and to establish offenders' responsibility. AFMs do this more overtly and extensively than police, particularly in cases where police make applications without the consent of the AFM. Victim-survivors' resistance is both evident within the narratives and in the fact of making the applications themselves. In this section the ways in which they combine subjects and predicates is considered in more detail, showing how AFM authors use narratives to document violence.

The most frequent predicate type among AFM authors of applications for FVIOs relates to harm. Very often the subject in these clauses is the respondent, describing the harms the RESP has inflicted on them and their children and families:

THE RESPONDENT HAS BEEN ABUSIVE IN SO MANY WAYS SINCE WE FIRST MET (FLS5 AFM)

THE RESPONDENT USES EVERY OPPORTUNITY TO PUT ME DOWN (WJ9 AFM)

THE RESPONDENT HAS ALWAYS CONTROLLED ME WITH MONEY (FLS2 AFM)

AFM authors often make efforts to humanise themselves and contextualise their actions. When AFM authors make use of relationship predicates with the respondent as the subject, they contextualise themselves and their experiences:

THE RESP BEGAN GETTING CLOSE TO ANOTHER GIRL (WJ4 AFM)

HE SAID ILL JUST LEAVE (WJ4 AFM)

THE RESPONDENT IS MY EX-HUSBAND (WJ5 AFM, WJ6 AFM, WJ9 AFM...)

AFM authors also seem to provide context by explaining the circumstances around the harm being reported:

I WENT TO VISIT THEM (WJ5 AFM)

ON *** AT 7-ELEVEN *** LOCATED ***. THE RESPONDENT PARKED IN FUEL BAY NUMBER 4, MOMENTS FOLLOWING MYSELF PARKING AND FUELLING UP IN BAY NUMBER 5 (WJ10 AFM)

I WAS LEAVING TO WALK MY DOG (WJ4 AFM)

AFM authors also share information about themselves. They describe contextual information relating to legal status and intentions

I HAVE AN ORDER AGAINST MY EX-PARTNER. (WJ10 AFM)

I HAVE LODGED AN ORDER AGAINST THE RESP'S PARTNER IT IS RETURNABLE AT ***. (WJ10 AFM)

I HAVE REPORTED THE FAMILY VIOLENCE TO POLICE AT *** STATION. (WJ10 AFM)

AFM authors also seek to communicate their understanding of their situation, what they know/think/believe:

AND I AM CONCERNED THAT IT IS STILL IMPACTING HIM WHEN THEY ARE WITH HIM. (FLS5 AFM)

I THOUGHT WITH MY FRIENDS AROUND I WOULD BE SAFE. (WJ4 AFM)

AND I BELIEVE [RESP] HAS A PROBLEM WITH DRUGS AND/OR ALCOHOL. (WJ5 AFM)

And they seek to make explicit how they have been harmed:

SO I AM UNABLE TO ACCESS THE BANK FUNDS (FLS4 AFM)

I HIT MY HEAD REALLY HARD ON THE ROOF HANDLE (WJ4 AFM)

WE BECAME HOMELESS DUE TO EVICTION (WJ5 AFM)

Reflecting on the power of AFM resistance

Resistance directly counters a central purpose of gendered violence, which is to exert control over another person.²⁴ Resistance comes in many forms, some of which are obvious, some are hidden.²⁵ Legal processes are commonly anticipated to be opportunities for victims to regain control after a violent event by enabling victims to narrate own version of what happened.²⁶

²⁴ Jay Jordan, *Serial Survivors: Women's Narratives of Surviving Rape* (The Federation Press, 2008) 6.

²⁵ *Ibid.*, 28.

²⁶ Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice' (2019) 28(2) *Social & Legal Studies* 179.

The narrative section of FVIO applications provide such an opportunity to AFMs. In these sections, AFMs can represent themselves as active subjects doing things to manage a violent person, to protect themselves and other people. This can help support workers, police, registrars, advocates, and magistrates recognise AFMs as active survivors. Therapeutically, these narratives can help AFMs recognise themselves as exercising agency in the face of another person's controlling violence.²⁷

AFM application WJ9 illustrates a range of actions which AFMs might regularly perform to manage violent family members. This includes being nice to the RESP, smiling, trying to find solutions to problems appearing to cause the RESP's anger, instructing the RESP to stop, expressing upset, standing up for themselves, calling for help, leaving the RESP and applying for an intervention order.

I WAS CRYING OUT FOR HELP ... [THE RESPONDENT] BLAMED ME FOR EVER QUESTIONING ANYTHING, IF I WAS UPSET, HE WOULD CALL ME 'DRAMATIC,' IF I STOOD UP FOR MYSELF, HE WOULD PHYSICALLY THREATEN OR ASSAULT ME, IF I WAS NICE TO HIM, HE WOULD TELL ME TO 'STOP ACTING', IF I SUGGEST A SOLUTION HE SAYS 'I AM THE PROBLEM' ... MYSELF AND ***** WERE INSTRUCTING HIM TO STOP... IF I SMILE HE SAYS 'MY TEETH ARE BIG'... [AFM WJ9]

Each action can be interpreted as an act of resistance. AFM WJ9's application provides a tangible demonstration of the AFM interrupting the RESP's attempts to control her, or subordinate her to his will, with a report of her own agency. Narrating her actions with herself as the agent in an application for an FVIO directly resists the RESP's violence.

Applying for an FVIO, or refusing an FVIO, can be interpreted as acts of resistance. For instance, in WJ3, the AFM sought to have violence recorded, but refused to consent to a FVIO. AFMs actively navigate violent relations and legal systems in different ways. A singular or prescriptive model of what constitutes 'resistance' in the context of DFV will therefore be inadequate to capture the full range of expressions of agency in constrained conditions.²⁸

Narrating themselves as subjects performing actions has important therapeutic potential as a form of AFM resistance. Narrating the self as active is therapeutic.²⁹ For example, narrative therapy supports survivors of interpersonal violence to 're-narrate' events to help them recognise themselves as empowered, capable, and entitled to lives free from violence.

➤ **AFMs actively navigate violent relations and legal systems in different ways. A singular or prescriptive model of what constitutes 'resistance' in the context of DFV will therefore be inadequate to capture the full range of expressions of agency in constrained conditions.**

This can mean that even when the AFM's statements appear to represent the AFM supporting the RESP (I SHOWED NOTHING BUT SUPPORT [WJ4]) or withdrawing to avoid violence (I THOUGHT THE RESP WAS GOING TO HIT ME SO I WENT IN MY ROOM [WJ4]), the AFM is demonstrating their perception of themselves as agentic, as capable of action.

This agency is also reflected in statements about an AFM's relationship to the RESP. For instance, I AM SEPARATED FROM THE RESPONDENT [FLS2] demonstrates the AFM's ownership of the separation, in contrast with the statement that WE HAVE BEEN SEPARATED [FLS6]. Similarly, there is a difference between THE RESP LEFT A VOICEMAIL [WJ4] and I RECEIVED A MESSAGE [WJ5]. The second statement articulates the AFM as having some control over the message's journey without situating responsibility for the content of the message with the AFM.

²⁷ Catrina Brown, 'Women's Narratives of Trauma: (Re)storying Uncertainty, Minimization and Self-Blame' (2019) 3(1) *Narrative Works*, 2013; see also Allison McCord Stafford & Claire Burke Draucker, 'Emerging Adult Women's Views-of-Self in Intimate Partner Relationships That Are Troubled' (2019) 40(4) *Issues in Mental Health Nursing*, 289; see also Claire Burke Draucker, 'Narrative therapy for women who have lived with violence' (1998) 12(3) *Archives of Psychiatric Nursing* 162.

²⁸ Heather Douglas et al, 'Facts seen and unseen: improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims)' (2020) 32(4) *Current Issues in Criminal Justice* 32(4) 488.

²⁹ See Brown (n 26); Stafford and Draucker (n 26); and Draucker (n 26).

Articulating the self as a subject and making things happen in a narrative can demonstrate the author's feeling of agency and empowerment. The extent of such representations varied across the AFM applications. For instance, FLS4 included only one clause in which the AFM represented herself as the subject, whereas WJ4 had 19 statements in which the AFM represented herself as the subject.

The identification of AFM agency and resistance demonstrates the work that AFMs are doing and the expertise they have about the situations they are navigating, including what their needs are. It is important to note the therapeutic benefits for AFMs. It is also important to be cognisant of the possible implications for AFMs if their capacity to author their own applications is undermined. Acknowledging the importance of AFM authorship and expertise is critical for interrogating how the application currently unfolds (particularly concerning the lack of clarity about the application process), and for formulating improvements in AFM's access to justice.

Relationships and AFMs in police applications

In applications authored by police, the types of information reported about the respondent are similar in nature to those provided by AFM authors. The differences between the narratives in AFM and police applications is: the length of the reports; their focus on harms being inflicted across time (a feature of the AFM authored applications but not the police authored applications); and the proportion of the text devoted to this material (significantly less in the police authored applications, as indicated above).

Police describe how respondents harm AFMs in more limited ways than AFM authors:

THE RESP HAS TOLD THE AFM THAT HE DIDNT WANT HER TO BE A PART OF THEIR DAUGHTERS LIFE (WJ7 POL)

AND DRAGGED HER TO THE VEHICLE. (WJ2 POL-**)

THE RESP WOULD BEGIN TO ABUSE THE AFM VERBALLY AND EMOTIONALLY ... (FLS10 POL)

Police may also provide some, generally brief, background about the history/nature of relationship between RESP and AFM:

IN 2021, THE RESP RETURNED TO THE AFM'S LIFE (FLS10 POL+)

WHEN THE CHILD WAS DELIVERED IN 2021, THE RESP BECAME MORE DISTANT (FLS10 POL+)

THE RESP EVENTUALLY MOVED OUT. (FLS10 POL+)

Police describe where people are located in relation to each other and/or the events being reported in the application narrative as well as assessments of the level of risk (n=5) the respondent represents (as articulated in relation to known risk factors such as drinking and drug taking):

ON *** THE RESP ATTENDED THE AFMS ADDRESS (WJ1 POL+)

THE RESP DRINKS HEAVILY EVERY NIGHT (FLS7 POL+)

The types of material reported by police about respondents is broadly consistent in type with what is reported by AFM authors. However, the narratives constructed by police about AFMs are different from the ways in which AFMs write about themselves. The most frequent type of information reported about the AFM in police authored reports relate to the location of the AFM:

AFM LEFT THE RESP AT HOME (FLS3 POL-)

ON *** THE AFM WENT TO HER FRIEND'S ADDRESS WITH THE RESP AND HER *** SON. (WJ1 POL +)

[AFM] ATTENDED *** TO MAKE A STATEMENT (WJ11 POL +)

Police also report the words of the AFM, most often using the verb 'state' but also using the word 'disclose':

THE AFM STATES WHEN THE RESP DRINKS HE GETS VERBALLY AGGRESSIVE (FLS8 POL+)

AND AFM DISCLOSED ON A PREVIOUS OCCASION THE RESP WAS GET HIS WAY(FLS6 POL+)

Finally, the police make comments about the legal situation in relation to RESP and AFM, they use a variety of methods for this, but do not report this information using the respondent as the subject.

THIS IS THE SECOND RECORDED FV INCIDENT (FLS3 POL-)

POLICE A SEEKING A LIMITED IVO FOR THE PROTECT OF THE AFM AND HER CHILDREN. (WJ3 POL-)

As noted above, two of the ten police applications involved an AFM who was explicit about not supporting the application for an FVIO. One further application was initially in support of the application, but later wanted the FVIO withdrawn.

The narratives in the two non-consensual applications look different from the other eight applications. In these applications, the agency of the AFM comes into central focus in a way that was not present in the AFM-supported applications. Where the AFM did not consent to the order, the police application emphasises the actions of the AFM to resist the violence, and to involve the police in the matter, as shown below:

AFM ATTEMPTED TO STOP THE RESP... AFM LEFT THE RESP AT HOME AND DROVE FOR 1.5HRS BEFORE ATTENDING THE POLICE STATION. THE AFM FURTHER DISCLOSED TO POLICE THE RESP CONTROLS ALL THEIR FINANCES [and] ALSO FEELS ISOLATED FROM HAVING FRIENDS DUE TO THE RESP NOT ALLOWING HER TO HAVE MALE FRIENDS (FLS3 POL-)

While the actions of AFMs are emphasised in police applications without AFM consent, the focus of the police narrative in the eight consensual applications is almost entirely on the actions of the respondent and the harms he caused. In these narratives, to the extent that the AFM is involved at all, the focus is on how she felt about the violence, and the fact that the AFM ended up going to the police to report the matter. For example, in FLS7 POL+ there are five sentences describing the respondent's conduct, but the only mention of the AFM's conduct is part of one sentence describing the AFM's fear. In WJ1 POL+, there are seven long, complex sentences focusing on the respondent's conduct, whereas the AFM is mentioned in one simple sentence which notes that the AFM attended the police station and made a statement:

THE AFM FEARS FOR HER SAFETY AND THE SAFETY OF HER CHILD AS THE RESP CONTINUALLY THREATENS THE AFM WHEN THEY ARE IN COMMUNICATION (FLS7 POL+)

THE AFM LEFT AND ATTENDED ***** TO MAKE A STATEMENT. (WJ1 POL+)

The focus of the police narratives in the applications made with consent appears to be to draw a picture of escalating violence on the part of the respondent. The AFM's agency is relevant only to the extent that she supports the police application for a FVIO.

SUMMARY

AFM applications differ from police applications in important ways relating to representations of AFM agency and resistance, respondent responsibility and harm.

Whereas AFM authors place the focus of their narratives squarely on the respondent, police authors tend either to provide an equal focus on the AFM and the respondent (in consensual applications) or heavily on the AFM (in non-consensual applications). This is noteworthy because if the respondent does not appear consistently as a subject in a narrative, and is not the focus, responsibility for the violence is not being situated with him. This may diminish responsibility and reduce the apparent gravity of the violence.

There are differences between the narratives in AFM and police applications in relation to the focus on harms. Police use harm in a way that is focused on risk assessment whilst AFM authors devote a greater proportion of the narrative text to documenting the harms caused to them by the respondent.

It is important to recognise the resistance and agency of AFM authors both in their application for, or their refusing of, a FVIO. AFMs actively navigate violent relationships and legal systems in different ways. There can be therapeutic benefits for AFMs in authoring the narratives of their applications. Conversely, removing their opportunity to author or altering the narratives they author risks compounding the effects of violence by undermining their sense of agency and becomes an issue of communicative justice.

➤ **Whereas AFM authors place the focus of their narratives squarely on the respondent, police authors tend either to provide an equal focus on the AFM and the respondent (in consensual applications) or heavily on the AFM (in non-consensual applications).**

DISCUSSION

The process of analysing the narratives in FVIO applications highlighted important questions about how these narratives are crafted; when and to what degree they might be altered during the application process; and for what purpose. For instance, anecdotal evidence suggests that court registrars play a significant role in editing, rewriting, and restructuring the narratives in AFM applications. However, registrars are largely invisible in this process since there is no record of their contributions or changes to AFM's narratives.

The lack of a clear map makes the process of applying for an FVIO opaque. It is difficult to understand what information is important at each stage of the process, and why, and the various roles of the different actors involved. The absence of a map also prevents practitioners and researchers from understanding the level of consistency in the application process for AFMs. Improving transparency and access to information about the FVIO application process would improve AFMs access to justice.

➤ **Improving transparency and access to information about the FVIO application process would improve AFMs access to justice.**

The narratives of violence analysed for this research reiterated how often FVIOs fail to protect women experiencing family violence. Analysis of the narratives revealed that close to half of the applications noted that respondents had previously been subject to FVIOs. Although FVIOs may reduce violence for some women, there is evidence of repeated patterns of abuse that appear not to be addressed by FVIOs.

FVIOs tend to rely upon physical separation between an AFM and respondent as a strategy to prevent violence. However, as noted earlier, prior research suggests that separation is not straightforward and that it can in some instances increase the risk of lethal violence. Moreover, as the police applications submitted without the consent of the AFM indicate, physical separation (and perhaps legal involvement) is not necessarily an outcome that all victim-survivors want. It may also be the case that there is a lack of services to support the reduction of violence while the family stays together.

The fact that police can pursue an application for an FVIO without the consent of the AFM highlights the capacity for state agents to replicate and extend the effects of gendered violence, rather than remedy it. Pursuing a legal order for the protection of a victim-survivor against their wishes risks further diminishing their agency and autonomy. This practice may be perceived or experienced as paternalistic (since it implies that police know better than a victim-survivor what she needs) or coercive (since it pressures victim-survivors to engage with the legal system and pits them against their partner).

The small sample of FVIO applications analysed for this research suggests that there may be a racialised or cultural dimension to the practice of police applying for FVIOs without AFM consent. This is because two of the three police applications that lacked AFM consent in our sample involved AFMs with limited English language proficiency. This may represent another area of law where CALD women experience differential treatment and unique barriers to accessing justice. Given that three quarters of all FVIO applications in Victoria are initiated by police and that the number of FVIO applications overall is increasing, the effects of this practice require further investigation. Research methods that can document the experiences of women who have been listed as an AFM on an FVIO without their consent would generate valuable new knowledge about this.

When the narrative sections of FVIO applications are delivered to advocates and magistrates, they are represented as 'authored' by AFMs or police officers. However, the AFM narratives may have been altered by registrars. It is unclear how much alteration has been done in any of the narratives we analysed. The practice of registrars altering narratives requires further investigation because it risks misrepresenting and diminishing AFM's own accounts and experiences.

RECOMMENDATIONS

- ▶ A clear and transparent process map for FVIO applications is needed that is easily accessible to AFMs. This should inform AFMs about the types of information that are necessary at different stages of the process and for what purposes.
 - ▶ People with lived experience of DFV should be centrally involved in the design of any information made available to support them in applying for an FVIO.
 - ▶ There is need to generate and share knowledge between AFMs, court registrars, and magistrates (in particular) about how each of them perceives and experiences the FVIO application process. This will help to develop the process map above.
 - ▶ Further research is needed to establish the degree to which FVIO application narratives are edited, restructured, or rewritten by court registrars and for what purpose.
 - ▶ The evidence-based nature of the narrative in the FVIO application should be clearly explained in the online application form. More guidance for preparing the narrative to serve as evidence should be provided to AFMs.
- ▶ The reason for converting the text of the narratives to all caps should be clarified and consideration given to ceasing this practice. This would better preserve the integrity of the AFM's version of the narrative and avoid any unintended connotations of all caps text (such as heightened emotionality).
 - ▶ Qualitative research is needed to learn about the experiences of AFMs who have police apply for FVIOs on their behalf without their consent, any police accountability mechanisms that are in place, and the extent to which this police practice is experienced as racial and paternalistic.

APPENDIX – DETAILED DATA

The tables presented here provide more detail in relation to the distribution of subjects and predicate types in the applications for FVIO orders analysed in this research.

Table 2: Types of subject (rows) by author (columns)

Subject	AFM	Pol +AFM	Pol -AFM
AFM	26% (n=111)	34% (n=56)	42% (n=16)
AFM & RESP	4% (n=18)	16% (n=26)	18% (n=7)
OTHER	16% (n=68)	15% (n=24)	21% (n=8)
RESP	54% (n=233)	36% (n=59)	18% (n=7)
Total subjects in main clause	100% (n=430)	100% (n=165)	100% (n=38)

Table 3: Types of predicate (rows) by author (columns)

Predicate type	AFM	Pol +AFM	Pol -AFM
account	1% (n=3)	6% (n=10)	3% (n=1)
argue	0% (n=1)	1% (n=2)	3% (n=1)
contact	4% (n=16)	5% (n=9)	5% (n=2)
feel	3% (n=14)	4% (n=6)	11% (n=4)
harm	50% (n=214)	24% (n=40)	21% (n=8)
know	7% (n=29)	8% (n=14)	5% (n=2)
legal	8% (n=35)	6% (n=10)	24% (n=9)
money	0% (n=2)	1% (n=1)	0% (n=0)
move	6% (n=26)	10% (n=16)	8% (n=3)
other	1% (n=6)	4% (n=6)	0% (n=0)
relationship	15% (n=65)	21% (n=35)	16% (n=6)
resist	2% (n=9)	4% (n=7)	3% (n=1)
risk	2% (n=10)	5% (n=9)	3% (n=3)
Total predicates in main clause	100% (n=430)	100% (n=165)	100% (n=38)



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